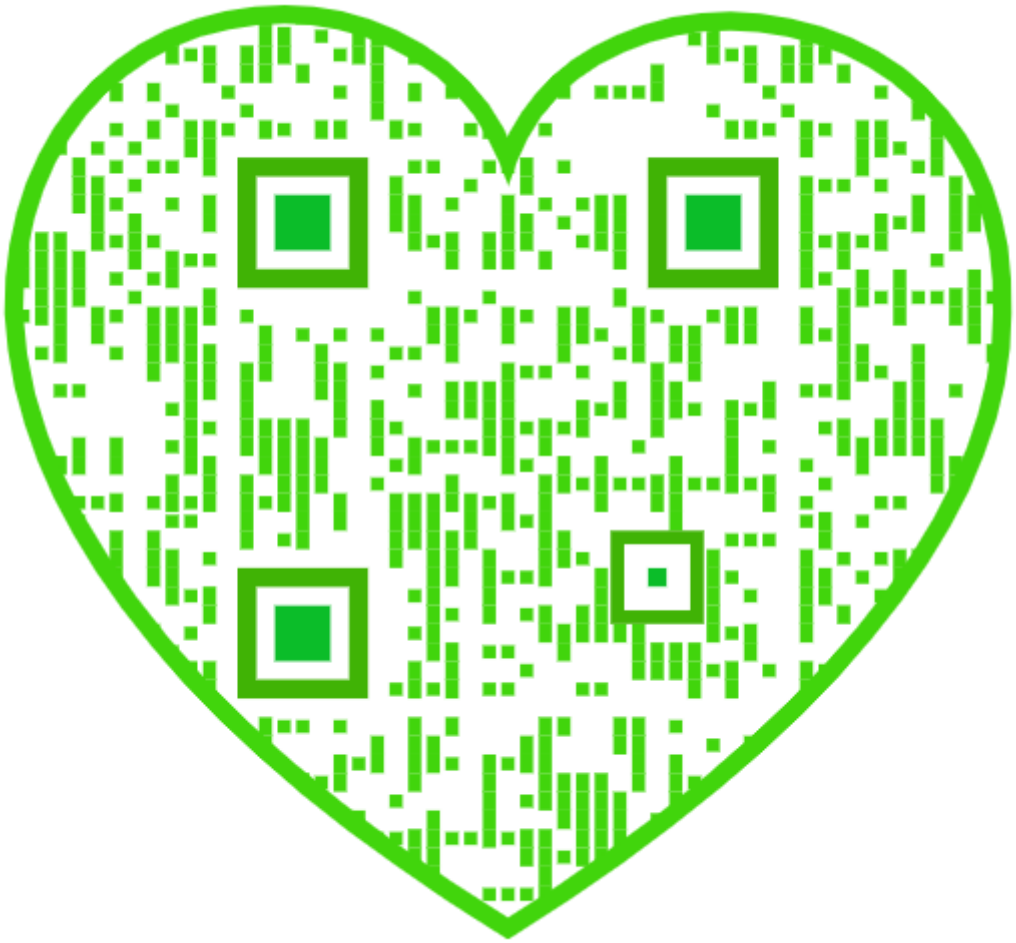

THE AMERICAN REPUBLIC

THE POWER OF THE LAW

From a mural decoration in the State House at Albany. By Blashfield

THE AMERICAN REPUBLIC

A TEXT IN CIVICS FOR HIGH SCHOOLS ACADEMIES AND NORMAL SCHOOLS

BY

S. E. FORMAN

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1911

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PREFACE

THIS book is based on my Advanced Civics and is an abridgment of that text. It has been prepared to meet the needs of schools where the time allotted to Civics is somewhat limited and where a more extended treatise cannot be used to advantage.

The plan followed in the larger book is also the plan followed in this. In Part I the student is given a broad, elemental view of American government; he learns of democracy, of representation, of the separation of power, of constitutionalism, of federalism, of local self-government, of civil liberty. These are the foundation stones upon which the American Republic is built and to present these great themes first is simply to begin by laying the foundation. In Part II is an account of the political superstructure, the governmental machine. Here, too, the aim has been to treat important subjects broadly and amply, but there has been no effort to present a vast array of facts. We shall not improve the citizenship of our youth simply by gorging their minds with facts and details of government. The way to improve citizenship is to establish correct political ideals and indoctrinate in sound notions of political morality. In Part III is an account of the services which are rendered by our government. Here the student is brought face to face with the everyday work of the government and is led to consider and discuss many of those practical problems which are confronting American citizens.

S. E. F.

September, 1911.

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PART I

THE ESSENTIAL PRINCIPLES OF THE AMERICAN GOVERNMENT: THE SPIRIT

THE AMERICAN REPUBLIC

I

POPULAR GOVERNMENT

1. Society and Government. Man is impelled by the nature of his being to seek the companionship of man. Just as instinct brings birds together in flocks and causes bees to swarm and buffaloes to roam in herds, so by instinct men come together and live in groups. This disposition of men to live in groups is described by the word social (*socius*), which in its origin means *partaking of, sharing.* A body of persons united by this social instinct, this desire to share and participate with others in the fortunes and misfortunes of life, is a *society.*

If man could live separate from all of his kind his freedom would be perfect; his conduct would depend entirely upon his own will and desires. But he cannot live thus. He must live in society, and in the social relation he must do things that he does not wish to do, and he must refrain from doing things that he wishes to do. Wild, unrestrained freedom would destroy the peace and safety of the social group. In every society, therefore, there are rules (laws) to be obeyed and rulers to enforce the rules. The authority which imposes rules upon the conduct of men and punishes those who disobey is *government.* The word *government* is derived from a Latin word (*gubernare*) which means *to guide or steer or pilot a ship.* The idea of piloting or guiding clings to the word government

in all its uses. We may say, with exactness of language, that government pilots society safely through the sea of man's passions and cruelty and selfishness. The manifold services of government will receive attention in another place (p. 196). Here it is enough to say that government lays its hands upon us in our infancy and is a guiding and controlling force all our lives. If it is wise and just and efficient it is an instrument of happiness; if it is foolish or tyrannical or incapable, it is an agency of misery. Our interest, therefore, in securing and maintaining a good government is direct and permanent.

2. Popular Government Defined; Majority Rule. A government which receives its powers from the people is a democratic or popular government, and a state in which popular government prevails is a *democracy*. In the United States political power everywhere flows from the people. The President of the United States, the Congress, and the national Supreme Court, all receive their powers from the Constitution of the United States, and this Constitution is a creation of the people (1)[1] of the United States; the government of a State[2] receives its powers from the people of the State; a city or a town or a county is governed by the people who reside within its borders. Thus in the United States the will of the people prevails not only in the country taken as a whole but in all its parts as well. This is the fundamental principle of the American government.

The people govern by a political device known as *majority rule*. When a question of government is to be decided, or when an officer of government is to be chosen, an orderly vote is taken and the will of the majority is regarded as the will of all. The majority rules and the

[1] The numbers in heavy-faced type refer to passages in the Constitution of the United States (Appendix A) which are distinguished by corresponding numbers on the margin.

[2] In this book when the word "state" begins with a capital letter one of the members of the American Union is meant.

minority submits to the will of the majority; this is a necessary and unavoidable feature of democratic government. The minority, right or wrong, must bow to the will of the majority. If the cause of the minority, however, is just, it may be promoted, and in good time the minority may become a majority. A righteous and aggressive minority will not suffer permanent defeat.

3. Democracy in the United States. The political history of the world shows that the principle of democracy is a persistent and indestructible force in human affairs. In America democracy has been a powerful force from the beginning. In the colonial period large numbers of people participated in government in every colony, and when independence was declared it was declared in the name of the people. "The people" at the time of the Revolution meant but a small portion of the adult male population, but the proportion steadily grew, and by the year 1840 democracy in America meant that all white male adults had the right to vote. Thirty years later all black male adults also enjoyed this right. Democracy in the United States to-day means the rule of practically the whole body of grown men plus a portion of the grown women, about 16,000,000 persons, or one fifth of the total population.

4. Why Popular Government is the Best. What are the reasons which have urged the people to undertake the dangerous and difficult task of governing themselves? There are three coercive reasons why popular government should be maintained:

(1) The people are the best guardians of their own liberties and interests. Government *by,* is government *for.* Government by a king will be conducted in the interest of the royal family; government by an aristocracy will be administered for the benefit of a small class; government by all will aim to promote the welfare and protect the rights of all.

(2) Democracy is best for the individual. Participa-

tion in government adds to the interest of life, sharpens the intellect, broadens the sympathies, cultivates a civic conscience, and thus enriches and elevates individual character.

(3) Popular government develops the highest type of patriotism. Citizens of a democracy always spring quickly to the defense of their government, for it is a work of their own hands. Subjects of monarchies, on the other hand, have been known to be driven into battle by the lash. Popular government has had its fullest development in Switzerland, and the Swiss are perhaps the most patriotic people in the world.

5. The Dangers of Popular Government. We are sometimes taught to regard democracy as something divine. We are told that the voice of the people is the voice of God. We should cherish the principle of democracy and resist every attempt to undermine it or sap its strength, but we need not regard it as a divine institution. It is simply one of the forms of government. It is that form in which the people rule by the device of voting and abiding by the will of the majority. That is all. Democracy is a human institution, and like all human institutions it is beset by dangers. Three of these dangers are inherent and must be pointed out:

I. *Indifference.* It is extremely easy to forget and neglect civic duty. It is next to impossible to keep the attention fixed constantly upon public affairs. Yet the success of popular government requires that the citizen's interest in public affairs be sustained, and that his watchfulness shall never be relaxed. Eternal vigilance is the price of democracy as well as of many other good things. A people who are habitually indifferent to the affairs of government are not fit to rule themselves.

II. *The Demagogue.* A demagogue is a leader who seeks to gain political power for his own selfish purposes, and not for his country's good. The demagogue flatters

the people and confirms them in their prejudices and wrong-thinking and, if necessary, lies to them. He would rather lead the people to their destruction than fail in his designs. We must always have leaders, and as long as there are men who prefer their private gain to the public welfare, so long will the false leader, the demagogue, be with us. We ought, therefore, to keep a sharp look-out for this arch enemy of democracy and deal him a blow whenever he shows his baleful head.

III. *Tyranny.* We are accustomed to associate the idea of tyranny with kings, but what is tyranny? It is an exercise of power without regard to justice; it is an exercise of brute force. Now if the majority ruthlessly trample upon the rights of the minority, the minority feels the tyranny as keenly as if it were inflicted by a despot. Tyranny in popular government is worse than the tyranny of monarchies. A tyrannical king can be overthrown, but when a majority is tyrannical its tyranny cannot be successfully resisted.

6. Democracy and the Individual. We learn in physics that a body acted upon by a number of forces applied from different directions yields something to each force and moves in a line that is the resultant of all the forces. So it is in the political world. In a democracy a number of wills exert themselves upon government to make it go this way and that; it yields something to each and moves in a direction that is the resultant of all the wills. Plainly, then, the responsibility for the course of public affairs must be sought in the doings of individuals. Just as one's personal conduct affects the government of the home for good or for evil, or the government of the school for good or for evil, so does personal conduct affect the larger civil government for good or for evil. This is another way of saying that good government begins with one's self, not with one's neighbor. When I grasp the idea of personal responsibility in political matters, when I understand that

the greatest contribution I can make to the cause of good government is to order my own political actions aright, I am beginning to understand the duty that rests upon me as a citizen of a democracy. The first fact of a democracy is the power of the people; the first fact of citizenship in a democracy is the responsibility of the individual.

QUESTIONS ON THE TEXT

1. What is society?
2. What is government?
3. What is a democracy? Why may we call the United States a democracy?
4. What is meant by majority rule?
5. Give an account of the growth of democracy in America.
6. Give three good reasons why popular government should be maintained.
7. Point out three great dangers of popular government.
8. How can it be shown that responsibility for good government in a democracy rests upon the individual?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Different Types of Government.* Aristotle (333 B. C.) was able to classify the two hundred and fifty states around the Mediterranean under three heads:

(1) The *monarchy*, the government of one, the strong.
(2) The *aristocracy*, the government of the few, the wise.
(3) The *democracy*, the government of the many, the good.

The forty-odd sovereign governments of to-day may be most conveniently classified as follows:

(1) *Absolute Monarchies*, in which the will of one person is unfettered and supreme.
(2) *Limited Monarchies*, in which the monarch shares political power with a legislative body.
(3) *Republics*, in which all political power flows directly or indirectly from the citizens who are entitled to vote.

2. *Election by Plurality.* If in a contest for office A receives 5000 votes, B 4000, and C 3000 there is no majority, but A receives a plurality. Should the will of the plurality rule?

3. *Second Election.* In some of the countries of Europe as in France, Germany, and Italy, certain officers of government cannot be declared elected unless they have received an *absolute majority* of all the votes. In these countries, when there are three or more candidates for an office and no candidate receives a majority of the votes, there is held a *second election* at which the only candidates are the

two persons who received the greatest majority of votes at the first election. What do you think of the second election as a political device?

4. Can society exist without government?

5. Which is worse, anarchy or despotism?

6. Classify the governments of the earth as absolute monarchies, limited monarchies, and republics. In which class do you find the greatest number of people? In which class is the highest grade of civilization?

7. In England practically all the male citizens of voting age have the right to vote. Is England a democracy?

8. Can democracy be strengthened by permitting women to vote? In what way may a non-voter influence government?

9. In the average school would the majority express its will in favor of order and industry? If so, would the minority acquiesce?

10. In olden times it was said that the voice of the king was the voice of God; in these times it is sometimes said that the voice of the people is the voice of God. In which statement is there more truth?

11. Which is better, self-government or good government?

12. Why should Civics be taught in the public school?

TOPICS FOR SPECIAL WORK

1. What is a State? [1] **1**: 4–7.
2. The Perils of Democracy. **2**: 279–301.
3. Democracy as a Social Force. **4**: 21–25.
4. The Extension of Democracy. **4**: 87–102.
5. Majority Rule. **4**: 161–173.
6. The Strength and Weakness of Democracy. **3**: Vol. II, 263–266.

[1] The number in heavy-faced type refers to the book of the corresponding number in the book list on p. 343.

II

REPRESENTATIVE GOVERNMENT

7. Representative Democracy. A popular government may have the form either of a *pure democracy* or of a *representative government.* In a pure democracy the voters transact the business of government in person; they not only choose the officers of government but they enact laws as well. *A representative government* is a popular government in which power is exercised by chosen agents (representatives) of the people, instead of being exercised directly by the people assembled as a pure democracy. A country which is governed by representatives elected by the people is a *representative democracy* or *republic.* In a representative democracy the people rule no less than in a pure democracy, but they rule indirectly.

8. Growth of Representative Government. Popular government had its origin in the little states or republics of ancient Greece. Here government was a simple affair. At stated times all the freemen assembled at a meeting-place and disposed of public questions by a direct vote, the majority of votes ruling. When the body of freemen was small democracy in this pure form was practicable; but how was the principle of popular rule to be applied to large bodies? How was the will of a state consisting of millions of people to be ascertained or expressed, and how was the government of such a state to be conducted? The ancient Greeks never answered this question successfully. They never discovered a method by which very large bodies of people might knit themselves together and live under one government and at the same time enjoy self-government

and civil liberty. Our Anglo-Saxon ancestors, however, solved this question in a very ingenious manner. When they invaded England (449 A. D.) they settled down in villages, but they united the villages into larger political associations known as hundreds. This union was effected in the following way: In each village four discreet men were chosen to attend the *hundred moot,* or meeting-place of the hundred, where they met other discreet men from the other villages of the hundred. The four men sent to the hundred moot spoke and voted for the village from whence they came. "Their voice was its voice, their doings its doings, their pledge its pledge." At the hundred moot were done only those things that the village could not do for itself. Strife between village and village was allayed; appeals were heard; judgment in the weightier cases of law was rendered. All matters that were purely local were still in the hands of the little home government, the village moot. The central authority did not destroy local self-government.

The union of villages under the government of the hundred pointed the way to the formation of larger unions. The villages also sent their representatives to a *shiremoot,* where public business was transacted in the name of the shire, the parent of the modern county. The organization of the shiremoot was the model for a national moot, and in 1265 the nation through its representatives met in a council at Westminster, two representatives from each shire attending. Thirty years later, in addition to the two representatives of the shire, two citizens from each city and two burgesses from each borough were elected to the national council. This council, consisting of representatives of the whole body of the English people, was the first English Parliament. With this body the sovereign power of the people was lodged, and England has been a representative government, as far as its law-making body is concerned, ever since.

Representative government developed in the other countries of Europe, but not so rapidly, or with such unbroken success, as in England. Throughout the last century, just as democracy gained strength everywhere, so did representative government gain strength everywhere. At the present time in all the free governments of the world the people govern, in part at least, through chosen representatives.

9. Representative Government in the United States. The representative feature of the American government is as marked as is its democratic feature. In 1619 Virginia had the honor of electing the first representative body that ever met in America. In New England the people from the beginning managed affairs that were purely local in the purely democratic way (p. 166), but in reference to the general affairs of the colony they acted through their representatives. And so it was in all the colonies. To govern through representatives seemed the only natural way of conducting political affairs. Independence was declared by representatives of the colonies, and the Constitution was framed by representatives of the States (130).

In the United States government is representative not only in the law-making department, but in all its departments. Our President and our governors and mayors and, in most instances, our judges, are chosen agents of the people. The officers of government who are not directly elected by the people are appointed by direct representatives, and are thus not far removed from the voters.

10. Principles of Representation. What principles shall govern in the choice of representatives? Shall a representative act for a class, for an interest, for a locality, or for all the people who elect him? How shall representatives be apportioned? For how long a time shall a representative retain his power? These questions have given rise to many political battles, and have led to many political experiments. In the English Parliament for a long

time manufacturing interests were represented by members from the boroughs and cities, farming interests were represented by members from the shires, church interests by the bishops, educational interests by members from the universities, the noble classes by the lords. In other words, Parliament represented only classes and interests. With the rise of democracy in the nineteenth century the system of government by classes and interests broke down in England and elsewhere, and an officer of government began to be regarded as a representative of all the people. For the law-making branch of government the principle of representation according to number was adopted; so many people, so many representatives. In order that the people might have an opportunity of choosing new agents and instituting new policies of government the term of the representative was limited to a fixed period of time. Another rule which was quite generally observed was this: the voters chose as a representative one who resided within the district in which the vote was taken. These principles of representation are applied to a greater or less extent in all countries which enjoy free government. In the United States they are applied with great fidelity in all the grades of government, in township and county and city and State and nation. The principles are four in number, and may be stated as follows:

1. A representative acts not for favored classes or interests, but for people as people.

2. Representatives in the legislature are apportioned according to population.[1]

3. A representative is chosen for a definite period of time, usually a short period.

4. A representative resides among his people (6).

[1] This rule does not apply to the representation of a State in the United States Senate. But this is hardly an exception to the general rule, for, as we shall learn hereafter (p. 91) a United States Senator does not represent people; he represents a State.

11. The People and their Representatives. In a representative democracy government on election-day passes out of the hands of the people for a time into the hands of their chosen agents. In the long run these agents will be like the people they represent. If the voters want good government their representatives will give it to them. As William Penn said: "Governments rather depend upon men than men upon governments. Let men be good and the government cannot be bad; for if it be ill they will cure it." The character of a government must always depend upon the voters who control it. It is of little use to scold our representatives, for they are one with us. When we become better they will become better. Nor should we attempt to shift responsibility from ourselves to our representatives. Representation is a device of great convenience, but it cannot work political magic. It cannot remove the burden of responsibility from the shoulders of the individual. When we assume the task of self-government we assume personal duties which no political contrivance will enable us to escape.

QUESTIONS ON THE TEXT

1. What is a pure democracy?
2. What is a representative democracy?
3. Give an account of the growth of representative government in England.
4. What has been the history of representative government in the United States?
5. State the four principles which govern in the United States in the matter of representation.
6. Show that representatives are like their constituents.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Representation of the Minority.* Sometimes the majority rule seems to work injustice to the minority. For example, in a State where the voters of one of the great political parties have a decided majority in all parts of the State, the minority will go unrepresented altogether. The legislature of Vermont at times does not contain a single member of the Democratic party, although there

are thousands of Democrats in the State. To secure a representation for the minority numerous devices have been proposed. Two of these have been practically applied. The first is known as the "limited vote" plan. When a group of three officers is to be chosen in a district, as, for example, three commissioners in a county, if no person is allowed to vote for more than two candidates, one of the three successful candidates may be a member of the political party which is in a minority. This plan has been adopted in Pennsylvania in the election of county officers. The second device for representing the minority involves the plan of "cumulative voting." Under this plan each voter may cast as many votes as there are candidates for office, and may distribute his votes or give them all to one candidate. By concentrating their votes upon one candidate a minority can generally secure representation.

2. *The Residence of Representatives.* In Great Britain a representative in Parliament does not have to reside in a district which he represents. For example, Mr. Gladstone represented a county in Scotland while his residence was near Chester, in England. What can be said for and against this custom?

3. Distinguish between a "delegate" and a "representative."

4. What qualities are developed in the citizen of a pure democracy? Which is better for the individual, a pure or a representative democracy?

5. In a number of States, local affairs, especially school affairs, are managed by the people meeting as a pure democracy. State the advantages and the disadvantages of this custom.

6. Arrange the following forms of government according to merit, placing the best first: Oligarchy, absolute monarchy, representative democracy, aristocracy, anarchy, pure democracy, limited monarchy. Give reasons for your arrangement.

7. Answer the following questions in reference to the relations that should exist between a representative and his constituents: Under what circumstances will a representative be justified in opposing the wishes of the people who elected him? If the wishes of the voters change after election, should the representative act according to the changed views of his constituents? Should the representative under all circumstances act according to his own judgment? Should he abide by the promises made before his election? Should he resign if his views do not accord with the views of his constituents? When a representative is instructed by his constituents as to a course of action should he obey the instructions? Should the people by their votes recall or remove a representative whom they regard as unfaithful in his discharge of his duties?

TOPICS FOR SPECIAL WORK

1. Origin of Representative Government in England. **1**: 21–25.
2. The Constituent and the Representative. **1**: 26–30.
3. The Four Essentials of a Representative System. **3**: Vol. I, 302–304.
4. Representative Government. **4**: 174–182.
5. Representative and Pure Democracy Compared. **1**: 303–310.

III

THE THREE DEPARTMENTS OF GOVERNMENT

12. How the Power of Government is Separated. The people of a free state will not confer all the power of government upon one person, or upon one body of persons. Experience has taught that it is better to divide governmental power into three portions, and to establish three departments of government, allotting to each department its own peculiar portion. The three departments of a popular government are: (1) The *legislative* department, upon which is conferred the power of making laws; (2) the *judicial* department, which is entrusted with the power of deciding how the law shall apply in particular cases when disputes arise; (3) the *executive* department, which is vested with the power of enforcing laws.

13. The Three-Department System in the United States. In America the lines which divide the three departments from each other are quite distinct and clear. In very few instances shall we find one branch doing what properly belongs to another branch. When the founders of the republic distributed the powers to the three departments they took great care that judges should do only the work of judges, that legislatures should only make laws, and that executives should be concerned only with the carrying out of laws, and they placed around each department effectual barriers against encroachment by the other departments. And the policy of the fathers has been continued to the present time. In the United States political power is everywhere distributed to three departments. This is true of the American government in all its gradations. In the government

of towns and cities [1] and States, as well as in the government of the nation, three departments are in operation, each doing a work that is peculiarly its own.

14. The Legislature. The most powerful and in some respects the most important department is the *legislature*, which expresses the will of the people in the form of laws. In the United States it is a general rule that the legislative department shall consist of representatives elected by the people for short terms. Almost every subject relating to the safety and welfare of society may come within the scope of legislative action. One of the most important powers of the legislature is to provide money by means of taxation for the support of government, for it is a cardinal principle of American politics that the legislature shall hold the purse-strings.

The English legislature, the Parliament, as it was originally constituted consisted of the representatives of four classes, (1) the nobility, (2) the clergy, (3) the knights, or representatives of the shires, (4) the burgesses, or representatives of the towns. Here was a legislature of four branches. Before the end of the fourteenth century the clergy were sitting and voting with the nobility, and the knights and burgesses were sitting and voting together. The four branches were thus reduced to two, the nobility and clergy constituting the House of Lords, and the knights and burgesses the House of Commons. In the colonies the English system of a bicameral legislature was quite generally imitated. Of the States formed at the time of the Revolution only three had legislatures of a single branch. At the present time the legislature of the nation (Congress) and the legislatures of all the States and those of many of our cities consist of two branches, an upper and a lower house. The upper house (often called the senate) usually consists of members who are older than members of the

[1] In cities governed by the commission system (p. 181), the legislative and executive power are not separate.

lower house, and who are elected for longer terms. The lower house is, on an average, about three times as large as the upper house. A measure must always pass both houses before it becomes a law.

Why is it necessary to have two separate bodies of men to pass a law? Experience, which has taught us so much about government, seems to decide in favor of two houses. Legislatures of a single house have been tried, and it has been found that they do not always act with sufficient deliberation. An anecdote related of Washington teaches very well the advantage of having two houses: Jefferson once, while dining with Washington, attacked the bicameral system as being clumsy and mischievous. Washington defended the American plan. "You yourself," he said, "have proved the excellence of two houses this very moment." "I?" said Jefferson, "how is that, General?" "You have," replied Washington, "turned your hot tea from the cup into the saucer to get it cool. It is the same thing we desire of the two houses." When a law must pass in two branches there is an opportunity for that sober second thought which is so valuable in every sphere of action.

15. The Judiciary. Violations of law will occur; disputes will arise between men as to their rights under the law; questions as to the meaning and scope of a law will be raised. The power of trying offenders and of settling controversies between contending parties and of interpreting the meaning of the law is lodged with the judicial branch. The work of the judge is confined to the cases that are brought before him. If no cases are brought, then the judge has nothing to do. The judges are usually chosen by the people, although they are sometimes appointed, either by the executive or by the legislature. Historically, they are really representatives of the people, for they pronounce the justice which was originally dispensed by a popular assembly. It has become the practice of all nations to

select for the judiciary men who are skilled in the law, and who by temperament and character are competent to render just and lawful decisions.

16. The Executive. The enforcement of the laws made by the legislature, and the decisions made by the judiciary, and the preservation of peace and order are the functions of the executive branch. In this department reposes the physical force of the State. The executive has at its command armies and navies and will use them if necessary. In republics the chief executive officers are elected by the people. Executive power in modern times is usually vested in one person — a president, a governor, a mayor, a prince, a king, an emperor. The executive very frequently has the power of *vetoing* an act of the legislature, but the veto usually can be overcome by a decisive vote of the legislature.

17. Independence of the Departments. Under our system each of the departments is quite absolute in its sphere, and quite independent of the other two departments. If one department seems to another department to be going wrong the latter will refuse to coöperate with the former, and thus obstruct its action. Thus if the legislature passes an act which in the distribution of powers the judiciary thinks it has no right to pass, the judiciary may hold the act to be null and void as soon as a dispute arising under the act is brought before it. If the judiciary presumes to exercise powers that do not properly belong to it, the legislature may by appropriate laws check the usurpation. If the executive goes strongly counter to the wishes of the legislature the latter may refuse to vote the money that is necessary to conduct executive business and thus stop the wheels of government. Thus by a system of nicely balanced powers and effective checks the independence of each department is secured.

QUESTIONS ON THE TEXT

1. Name the three departments of government and state the functions of each.
2. Give an account of the three-department system in the United States.
3. What are the powers of the legislature?
4. Trace the development of the bicameral legislature in England.
5. Why is the bicameral system better than other systems?
6. What powers are vested in the judiciary? How are these powers exercised?
7. What are the powers of the executive department?
8. Explain how one department may maintain its independence with respect to the other two.

SUGGESTIVE QUESTIONS AND EXERCISES

1. State to which of the three departments of government the following functions should be assigned: (*a*) The bombardment of a city by a fleet; (*b*) the sale of property for debt; (*c*) the execution of a murderer; (*d*) the sentencing of a thief; (*e*) the ordering of taxes to be collected; (*f*) the collection of taxes; (*g*) the dispersal of a mob; (*h*) the muzzling of dogs; (*i*) the declaration of a war; (*j*) the arrest of a man for disorderly conduct; (*k*) the construction of a bridge; (*l*) the regulation of the descent of property; (*m*) the settling of a dispute between the heirs of an estate; (*n*) the regulation of the speed of automobiles; (*o*) the determination of damages for injuries received in an automobile accident.
2. If power must consolidate, in which branch do you prefer that it will center? Give your reasons.
3. Show that it would not be wise to have only two branches of government.
4. Write a description of an ideal judge.
5. Contrast the qualities which are desirable in a law-maker with those which are desirable in an executive officer.
6. Name the great law-givers of history.
7. Name several of the great executive geniuses of history.
8. Would it be wise to entrust the law-making power of a high school to the pupils? the judicial power? Give reasons for each answer.
9. Give reasons for the bicameral system in addition to those given in the text.
10. What would be the probable result if one of the departments of government should refuse to act in harmony with the others?
11. In the government of yourself you are actuated by conscience, judgment, and will — which of these is legislative, which executive, and which judicial?
12. Name the officers of government with whom you are acquainted, and state in which department each serves.

A Hint on Reading: For a discussion of the subject of this chapter, read T. D. Woolsey's Political Science, Vol. II, 258–347; J. W. Garner's Introduction to Political Science, 407–426; S. B. Leacock's Elements of Political Science, 141–153.

IV

CONSTITUTIONAL GOVERNMENT

Introductory. A government may have all the characteristics thus far described, it may be democratic in form and spirit, it may be thoroughly representative, it may have the three branches clearly separated, and still there may be no guarantee that civil liberty will be permanently enjoyed. For officers of government are liable to abuse power, or to choose a wrong or unjust course of action. Can there be ordained a power that will lay hold of our lawmakers and judges and governors and say to them, "Thus far you may go, and no farther"? Is there a political contrivance that will protect citizens from the hasty or unwise action of rulers? We may let our own experience answer these questions.

18. Charters. During our colonial period each colony had a written document called a *charter*, which described the kind of government it was to have, and the privileges it was to enjoy. The colonial charters, whether granted directly by the king — as most of them were — or prepared by the people themselves, as in the cases of Connecticut and Rhode Island, were pledges of the good faith of the home government, and as such they were held in the highest esteem by the colonies. A colony looked upon its charter as the written guarantee of its liberties, just as an owner of property looks upon his deed as giving him a title to his house or farm. When the king or his officers became oppressive or unjust the people pointed to their charter as their defense. Upon one occasion the king, wishing to deprive Connecticut of its rights, sent an officer after its

charter, but the people frustrated the plan by hiding the precious document in the hollow of a tree. They felt that as long as they could keep their charter they were safe.

Under their charters the colonies grew and prospered, each colony developing in its own way and making its own laws. Each colony was independent of all the others, but all were dependent upon Great Britain. Since the charters were not all alike, the several governments of the colonies differed from each other, but since the charters all issued from the same source, and since the laws of England applied to all the colonies alike, the government of one colony could not differ very widely from that of another.

19. Constitutions. When the colonies separated from Great Britain and became independent States the old charters of course lost their validity, for there was no king to stamp them with authority. The people saw at once that they must be their own king and make their own charters. As rapidly as possible each of the new States drew up for itself a charter which recognized the people as the source of authority in government. A new name was given to this new instrument. Instead of its being called a charter it was called a *constitution*. This constitution was to be the foundation plan and framework upon which the governmental structure was to be built. Of course each new constitution was quite similar to the charter which it supplanted. For a State to have planned for a government quite unlike the one to which the people were accustomed would have been to commit a grave political error. A government that is new and strange is not likely to receive the confidence and respect of the people, no matter how wise and beneficent may be its provisions. The statesmen of 1776, therefore, made the new State constitutions conform as closely as possible to the colonial charters. Connecticut and Rhode Island experienced no change at all in passing from colony to State. They simply substituted the word "people" for the word

" king " in their charters, and these became their constitutions.

After they had established their independence the States found that it was necessary to unite and form a central government. The powers of this central government were expressed in the Constitution of the United States. The history and nature of this great document will be given hereafter. It is sufficient here to say that the Constitution[1] of the United States is our fundamental law. We have had occasion to refer to it heretofore, and throughout our work we shall refer to it constantly, and as we advance we shall learn more and more of its authority and influence in our political life.

Each of the States that have been admitted into the Union under the Constitution (118) has followed the example of the original States, and has framed a constitution for itself. Every State, therefore, and the United States as well, has a written constitution as its fundamental law. Thus government in America is everywhere conducted according to the written word; it is everywhere constitutional.

20. General Features of a Constitution. The essential parts of a constitution are:

(1) A *preamble* (1) stating the general purpose for which the government is instituted.

(2) A *Bill of Rights* guaranteeing to the people republican principles of government, personal security, private property, freedom of conscience, freedom of speech and of the press, and other fundamental rights of citizenship.

(3) *Provisions for the organization of the three departments* of government, and a description of the powers to be exercised by each.

(4) *Miscellaneous provisions* relating to such topics as

[1] In this book when the word " constitution " begins with a capital letter the Constitution of the United States is meant.

corporations, public debt, education, taxation, suffrage, amendments, revisions.

(5) A *schedule* describing how and when the constitution shall go into effect.

21. How Constitutions obtain their Authority. The first American constitutions were promulgated in the name of the people, yet they were not as a rule the direct creations of the people. The statesmen of 1776 did not have a very strong faith in the wisdom of the people, and were not quite willing to submit a fundamental law to a popular vote. As democracy grew more fashionable, and as the people came to be more fully recognized as the real masters of government, the custom of submitting constitutions to voters for their approval became general. At the present time a constitution is usually ratified by the people at the polls before it is put into operation. This popular ratification clothes the constitution with all the authority that a law can possibly have, for it is a law passed by the people themselves acting as legislators. A constitution, therefore, is a solemn and deliberate expression of the popular will, and as such it is a fixed, permanent law which all the branches of a government must obey.

22. The Amendment and Revision of Constitutions. Although a constitution is a fixed, unchanging law, it may not remain unchanged and unchangeable forever. A provision in a constitution which was wise and just fifty years ago may be harmful now. Every constitution recognizes this fact, and provides for making changes, when these may seem necessary. These changes or *amendments* are effected in various ways, the usual procedure being as follows: the amendment that is thought to be desirable first passes the legislature of the State and is then submitted to the people for their approval.[2] If it receives the required number of votes — frequently a majority of all the votes of

[2] In a number of States amendments are secured through the operation of the initiative and referendum. (P. 138.)

the State is necessary — it becomes a part of the constitution. An amendment, it will be seen, is simply a law passed by the people and placed in the constitution; but it is a law that cannot be repealed by the legislature.

Constitutions provide not only for their own amendment, but also for their own complete revision. They provide for the calling of a *constitutional convention,* which shall have power to revise the old constitution and frame a new one. A general revision of a State constitution is usually accomplished in the following way: The legislature submits to the people the question whether or not a convention shall be called to frame a new constitution. In several States this question must be submitted to the voters every twenty years; in Michigan it must be submitted every sixteen years; in Iowa every ten years. If the vote is in favor of a convention, delegates are elected, and the work of revision begins. It is the custom to submit the revised constitution to the people for their approval, although this is not always done.

QUESTIONS ON THE TEXT

1. What was a colonial charter?
2. What place did the charter occupy in the political life of the colony?
3. How did the charters become constitutions?
4. To what extent are written constitutions employed in the United States?
5. What are the general features of a written constitution?
6. From what source does a constitution obtain its authority?
7. How may a constitution be amended?
8. How may a new constitution be secured?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The English Constitution.* In all the countries of our Western World and in most of the countries of Europe, government is conducted according to the terms of a written constitution. In England, however, there is no written constitution, no single printed document which contains the whole body of the fundamental law of the land. There is, nevertheless, an English constitution and it is one of which Englishmen are justly proud. It consists of the stat-

utes of the English Parliament, of the rules of law as laid down by the courts, and of certain habits and practices which custom,— and custom alone — has prescribed for the guidance of public officials. The English constitution can be changed at any time by the actions of Parliament.

2. *The "Unwritten Constitution."* We sometimes hear of an "Unwritten Constitution" in connection with American politics. The principal items in this so-called "Unwritten Constitution" are said to be: (1) A Presidential elector (p. 104) must always vote for the candidate of the party that elected him: (2) The President may not be elected for a third term: (3) The President may remove any official without the consent of the Senate: (4) A member of Congress must reside in the district from which he is chosen. The first of these items and possibly the second, may with some propriety be regarded as parts of an "Unwritten Constitution," but it is extremely doubtful whether the third and fourth items can properly be said to have a place in our constitutional system.

1. What is the derivation of the word *charter? constitution?*
2. Compare the constitution of your State in outline with the outline indicated in the text.
3. Give briefly the constitutional history of your State, stating when the first constitution was adopted, what revisions have been made, the date of the adoption of the present constitution and the amendments that have been added.
4. Mr. Bryce, an Englishman, imagines that the American people could govern themselves without written constitutions. Give reasons why an American would hardly be able to imagine such a thing.
5. Explain fully the following sentence: The United States is a democratic, representative, constitutional republic.
6. Is it generally understood that the constitution of your State needs revision or amendment? If so, how may it be revised? How may it be amended?
7. Draw up a constitution for the government of a debating society. (In preparing this exercise remember that a constitution describes only the outline of government, and states only general principles.)
8. Would it be wise for your State to exchange constitutions with a neighboring State? Give reasons for your answer.

TOPICS FOR SPECIAL READING

1. What is Constitutional Government? **1**: 9–15.
2. Contents of State Constitutions. **3**: Vol. I, 437–450.
3. The Nature of Written and Unwritten Constitutions. **1**: 51–55.
4. How the Colonies were Governed. **14**: 36–51.
5. Amendments of State Constitutions. **1**: 265–266.

V

FEDERAL GOVERNMENT

23. The Different Kinds of Political Unions. An *alliance* is an agreement between two or more sovereign states to coöperate in the accomplishment of some mutually desirable purpose. A state entering into an alliance does not surrender or impair its sovereignty. Since an alliance may be dissolved at the pleasure of any of the contracting parties, it is the weakest of all political unions. Another kind of union between states is the *confederation* or *league*. A confederation is formed by two or more states uniting and establishing a central government, vesting it with certain powers, but withholding from it the right of exercising authority over individuals. In exercising its power the central government of a confederation must operate through the agency of the states which compose the union.

The strongest of all political associations is the *federal union*. In the federal union the uniting states establish a central (federal) government which is independent of themselves, and which operates with organs of its own, its power extending even to individuals. In the formation of the federal union, or the federal state, as it may very properly be called, the federal government is made sovereign, in respect to matters which concern all the states taken collectively, while each separate state retains its sovereignty in respect to those matters which concern only itself.

24. The Complexity of American Government. The United States is a federal republic, and its government is complicated and difficult to understand. Under our system au-

thority flows from two sources: we have one government of the nation and another government of the State; we have two constitutions and two sets of laws to be obeyed, and two sets of officers to enforce the laws; we have forty-six States working side by side, each attending to its own affairs in its own way, and over and through and in all these States there is the federal government attending to the affairs of the nation. How is this twofold authority possible? How can a person serve two masters? Suppose the federal government should command what the State forbids, which shall be obeyed? Where is the line which divides the authority of the federal government from the authority of the State? Such questions as these early force themselves upon the student of American government. We may best approach the task of answering them by taking a glance at history.

25. The Growth of Federalism in America. The American union as we see it to-day is the result of nearly three centuries of political association of colony with colony and State with State. The story of our union properly begins with an account of the *New England Confederation.* In 1643 commissioners from Massachusetts Bay, Connecticut, New Haven, and Plymouth met and formed a Confederation the purpose of which was to resist the encroachments of the Dutch and the ravages of the Indians. Each colony was represented by two commissioners. The Confederation had full power to determine all matters relating to peace and war. The league fulfilled the purposes for which it was formed and dissolved in 1684. It lasted long enough and accomplished enough to show to the colonies the great benefit of union, and the lesson it taught was never forgotten.

In 1754, when the colonists were hard pressed by the French and Indians, delegates from seven colonies met at Albany and agreed upon a *Plan of Union* drawn up by Benjamin Franklin, whose long life was devoted to the

cause of union. The plan proved to be acceptable neither to the people of the colonies nor to the English government, and the work of the Albany convention came to naught.

In 1765, nine colonies sent delegates to the Stamp Act Congress that met in New York to protest against the unjust and oppressive acts of England. This Congress was so vigorous in its declaration of American rights and was so thoroughly animated by the spirit of coöperation that it has been called the "day-star of American Union."

We see how the idea of union was enlarging. In the confederation of 1643 *four* colonies joined; in the Albany convention *seven* were represented; in the Stamp Act Congress *nine*. In 1774, a Congress of delegates from *twelve* colonies met at Philadelphia, and after making a declaration of rights, recommended a cessation of trade with England, commended Massachusetts for opposing the oppressive acts of Parliament, and resolved that all the colonies ought to support her in her resistance. As the union grew larger the colonists grew more determined and aggressive. In 1775, a Continental Congress of delegates from *all* the colonies met in Philadelphia.

The Congresses before 1775 had merely talked and petitioned and passed resolutions. The Continental Congress of 1775 began at once to act like a real government. It took charge of those matters that were of general rather than of local concern. It assumed command of the army that had been put into the field; it took charge of foreign affairs; it issued a currency; it managed the post-office. The question of its right to do these things was not raised. It did the things it thought the people wished it to do. Thus in 1776 it thought the people of the colonies wished a separation from the mother country. To make sure that it was not wrong in this opinion, it adjourned in order that the delegates might go back to their homes and learn the exact state of public sentiment. Upon reassembling, Congress, convinced that the people were ready for a sepa-

ration, on July 4, 1776, declared the colonies free and independent States, absolved from all allegiance to the British Crown.

26. The Articles of Confederation. While Congress was meditating independence it was also considering plans for bringing all the colonies under one regular, permanent government. Franklin, in 1775, submitted a plan of confederation, but it was not adopted. In 1776, John Dickinson reported a plan, which in 1777 was adopted as the "Articles of Confederation." These articles were submitted to the States for their approval, and in March, 1781, having been ratified by all the States, they became the framework for a new government for the United States.

The government established by the Articles was a confederation. Its sole organ of authority was a legislature of one house, called a Congress, presided over by a president elected by members from their own number. A State could not send less than two delegates nor more than seven to the Congress; but whatever the number of delegates, a State had but one vote, determined by a majority of its delegates present. Voting was, therefore, done by States, and it required the votes of nine States to carry any important measure. Any alterations in the Articles had to be agreed to by Congress and afterward confirmed by the legislatures of all the States, a provision that made amendment practically impossible. The most important powers committed to the new government were:

(1) To determine questions of peace and war.
(2) To enter into treaties and alliances.
(3) To send and receive ambassadors.
(4) To make rules governing captures on land and water.
(5) To decide, upon appeal, disputes between two States concerning boundaries.
(6) To determine the value of current coin.
(7) To manage Indian affairs.
(8) To establish and regulate post-offices.

(9) To appoint naval officers and the higher grades of army officers.

The States, while bestowing these powers upon the confederated government, expressly denied the same powers to themselves and pledged themselves to abide by the decisions of Congress in all matters submitted to it for determination. Congress could in no case bring its power to bear upon the individual citizen, nor had it any means at its command to compel the obedience of a State. By the terms of the Articles, each State was to retain its sovereignty, freedom and independence, and every power, jurisdiction and right.

The government provided by the Articles was fatally defective in organization, if it can be said to have had an organization at all. It had no executive branch and no judicial branch, and as a legislature it was bad, for it was one of a single house. All the powers were united in one body. Such a government must either rule like a tyrant or it must collapse.

As long as the war with England continued the Articles of Confederation rendered valuable service, but when peace came, and common danger no longer spurred the States to united action, it was soon seen that they were a rope of sand. It was seen that Congress "could make and conclude treaties, but could not command the observance of them. It could appoint ambassadors, but could not defray the expenses of their tables. It could borrow money, but could not pay a dollar. It could coin money, but could not purchase an ounce of bullion. It could make war and determine what troops were necessary, but could not raise a single soldier. In short, it could *declare* everything, but *do* nothing." It could not do what every useful government must be able to do; it could not secure obedience to its laws. It could not reach the individual, and it would have been folly to have attempted to enforce its laws against a State.

As a result of its inherent weakness the Confederation soon fell into a deplorable condition. Solemn treaties were violated, debts were repudiated, worthless paper money was issued, State quarreled with State. Disregard for the laws of Congress was naturally followed by a contempt for the laws of the State. In several States courts were broken up by armed mobs, and rebellion threatened the very existence of government. Congress sank to such a condition of inefficiency and feebleness that it lost the respect of the country. On one occasion it was chased from its place of meeting by a handful of drunken soldiers clamoring for their pay. Things went rapidly from bad to worse, and it became plain as early as 1785 that the Confederation was on the verge of a collapse.

QUESTIONS ON THE TEXT

1. Define *alliance; confederation.*
2. What is a *federal union?* In what respect does a federal union differ from a confederation?
3. What difficult questions arise in the study of federal government?
4. Describe the New England Confederation.
5. What step toward union was taken in 1754?
6. What was the object of the Stamp Act Congress?
7. Describe the first Continental Congress.
8. What were some of the things done by the second Continental Congress?
9. Describe the Confederation of 1781. What were the most important powers of the Confederation?
10. Point out the defects of the Confederation.
11. Give an account of the decline and fall of the Confederation.

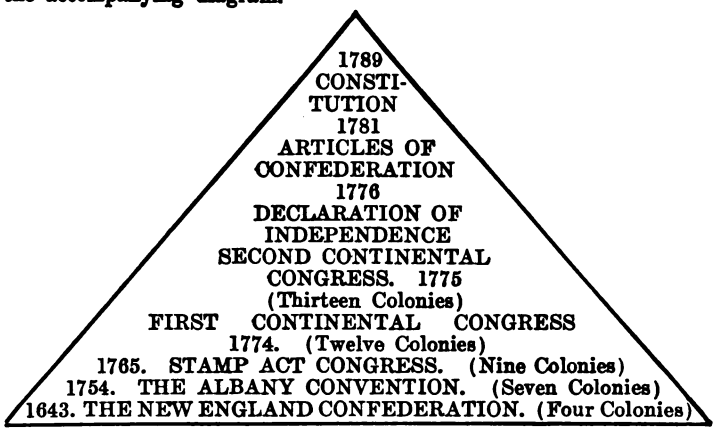
SUGGESTIVE QUESTIONS AND EXERCISES

1. What is the derivation of the word *federal?*
2. Name the great federal governments of the earth.
3. Make out a list of powers that should be granted to a federal government.
4. Bring into the class a good definition of the word "sovereignty."
5. Name some of the great alliances of the past. What great alliances exist at present?
6. What does the individual State lose by entering into a federal union? What does it gain?

7. Give an account of the services of Benjamin Franklin in the cause of American Union.

8. Prepare a five-minute paper on "The Dark Days of the Confederation." Consult Fiske's "Critical Period of American History."

9. Indicate the growth of federalism in America by reproducing the accompanying diagram.



TOPICS FOR SPECIAL WORK

1. The Articles of Confederation (Text). 1: 31–39.
2. The Articles of Confederation (Discussion). 15: 80–87.
3. The Defects of the Articles of Confederation. 7: 40–44.
4. The Formation of the Union. 14: 69–72.
5. The Confederation. 14: 77–86.

VI

FEDERAL GOVERNMENT (CONTINUED)

27. Efforts to Strengthen the Confederation. Thoughtful men viewed the approaching downfall of the Confederation with alarm. They saw that if the union of the States were dissolved, and each State should assume complete and undisputed sovereignty, the fruits of independence would be most bitter. With thirteen nations instead of one, the country would be the easy prey of foreign invaders, sectional interests would jostle each other and bring State into conflict with State, commerce between the States would be shackled, and all the social, moral, and intellectual advantages which flow from union would be lost.

Before it was too late men like Washington and Hamilton and Franklin came forward with measures designed to strengthen the union. In 1785 commissioners from Maryland and Virginia met at Washington's home at Mount Vernon to adjust some matters of interstate navigation. At this meeting Washington suggested that the two States ought to enter into an agreement as to the regulation of interstate commerce in all particulars. The discussion following this suggestion showed that if there was to be any useful regulation of commerce between the States all the States must join. Accordingly, all the States were invited to appoint commissioners to discuss the matter. In response to this invitation five of the thirteen States met at Annapolis in 1786. This representation was considered too small and the meeting adjourned without attempting anything. Before adjourning, however, it recommended that a convention of all the States be held at Philadelphia in

May, 1787, " to take into consideration the situation of the United States, to devise such further provisions as shall appear necessary to render the constitution of the federal [1] government adequate to the exigencies of the times." Congress, seeing the drift of affairs, adopted the idea of holding a general convention, and resolved that it was expedient that in May, 1787, one should be held at Philadelphia " for the sole and express purpose of *revising* the Articles of Confederation."

28. The Constitutional Convention of 1787. All the States responded to the call, excepting Rhode Island. The men sent to the Convention were the ablest and wisest in America. They represented conflicting interests, and differed widely among themselves in their views of government, but they were capable of placing the public good above selfish considerations. They had not proceeded far with their work before they saw that a mere revision of the Articles of Confederation would not bring relief to the country. If union was to be anything more than a name there must be a central government clothed with substantial power. Instead of continuing the Confederation, which was avowedly a mere " league of friendship " in which the exercise of power depended upon the States, the men of the Convention bravely decided to frame a Constitution for a real *federal* government, one which should have its three departments conducted by its own officials, and which should be independent of the State in the exercise of its powers. The proposed government was to reach the individual, make laws for him, take money out of his pocket for taxes, and judge and punish him if he violated its laws.

The framework of the new government was agreed to after a most serious and thorough discussion, and was submitted in September, 1787, to the people of the States as

[1] The Confederation was frequently called a federal government. In 1787 men had not yet learned to distinguish clearly between a federal and a confederated government.

a "Constitution for the United States of America." If ratified by nine States (129) the new Constitution was to go into operation. Its adoption was opposed fiercely by those who did not believe in a strong central government, but its friends were stronger than its enemies, and by July, 1788, it had been ratified by eleven States, North Carolina and Rhode Island withholding their consent. In 1789 the new government was organized in New York with Washington as President.

29. How the Convention Distributed Power. If we wish to understand our political system we must gain clear notions respecting the manner in which the framers distributed power to the State and federal governments. Let us suppose that the men of the Constitutional Convention of 1787 had at their disposal *all* the powers of a sovereign state, *all* the powers that it is possible for a government to exercise, and that they divided these powers between the new federal government and the existing State government in such a manner as they thought best. With this supposition in mind let us see what disposal they made of the great reservoir of governmental power which was at their command. And first let us learn what powers[2] they gave exclusively to the federal government:

I. *Powers Exclusively Federal.* When granting a power exclusively to the federal government it had to be plain to the minds of the framers (1) that the States would be willing to surrender the power; and (2) that the federal government needed the power. Applying these tests to each grant of power, the framers gave the federal government absolute control in the following matters: war, peace, treaties, alliances, ambassadors, postal affairs, the army and navy, foreign commerce, interstate commerce, naturalization, coinage of money, Indian affairs, bankruptcy, pat-

[2] The powers granted to the federal government are stated in Article I, section 8 of the Constitution (p. 324).

ents, copyrights, territories, letters of marque and reprisal.

II. *Concurrent Powers.* If the proposed federal government was to be strong and efficient it must be permitted to raise money by taxation and to borrow money; it must define the qualifications of those who were to vote for its officers and regulate the time and manner of holding the elections of its officers; it must have the support of the State militia in times of war. But it was not considered wise for the federal government to be given the exclusive power of collecting taxes and borrowing money and controlling its elections and militia. Hence it became necessary for the framers to grant certain powers to the federal government, and at the same time reserve powers of the same kind for the State. Powers belonging to both governments are called *concurrent.* The concurrent powers established by the Convention relate to the following matters: taxation, public debt, citizenship, elections, militia, eminent domain.

III. *Powers Prohibited to the Federal Government.* While the framers planned for a federal government which should be capable of achieving its rightful purposes, they at the same time took care that it should not be an instrument of oppression. To safeguard the interests of the States they formally prohibited certain powers to the federal government. The powers which were denied to the federal government in the Convention are stated in Article I, Section 9, of the Constitution (p. 325). Other prohibitions are found in the first eight articles of the Amendments which were adopted in 1791 to allay the fears of those who thought the new government might exceed its powers. These eight amendments are the bill of rights of the Constitution. They restrain the federal government, but they do not restrain the State.

IV. *Powers Prohibited to the State.* The framers saw that certain limitations upon the power of the State would

also be wholesome. Indeed in 1787 prohibitions upon the power of the State were more necessary than prohibitions upon the federal government, for the States were strong, and were disposed to disregard the authority of the central government. Accordingly, as a pledge of good faith on the part of the States a self-denying section (Article I, Section 10) was inserted in the Constitution.[3]

It should be noticed that there are three prohibitions upon both State and federal governments: neither a State nor the United States can grant any title of nobility (**71, 73**), or pass an *ex post facto* law,[4] or any bill of attainder[5] (**65, 73**).

V. *Powers Reserved to the State.* After the framers had provided for the general powers of the federal government, and had made the needful prohibitions of power, we may think of them as having reserved to the States and to the people all the remaining powers of government. They did not formally make this reservation in the Convention, but it was understood that the powers not granted to the federal government or prohibited to the States remained to be exercised as the States or as the people of the United States might ordain. In order that there might be no mistake on this point an amendment (**144**) adopted in 1791 declared that "the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively, or to the people." The nature and extent of the powers reserved to the State will be the main subject of the following chapter. At present it is enough to say that the framers were able to invest the federal government with supreme powers in

[3] The fifth and the fourteenth amendments taken together add a *fourth* prohibition, viz.: that no person shall be deprived of life, liberty or property without due process of law (**138, 152**).

[4] An *ex post facto* law makes an act criminal which was not so when done, or increases the severity of the punishment of a previous act.

[5] A bill of attainder is a legislative act which inflicts punishment without judicial trial.

reference to the great affairs of a nation and still leave the State supreme in most of the affairs which concern us in daily life.

30. Implied Powers of the Federal Government. The powers of the federal government are accurately defined and enumerated in the Constitution (Article I, Section 8). Among these powers is one giving Congress the right to make all laws which are necessary and proper **(63)** for the execution of the enumerated powers. Under the authority of this right there have been exercised many *implied* powers,— powers which are not specifically mentioned in the Constitution, but which naturally arise from those which are specifically mentioned. For example, from the expressed power of regulating commerce **(47)** arise the implied powers of building lighthouses and improving harbors; from the expressed power of coining money **(49)** arises the implied power of establishing mints. Hundreds of things done by the federal government are justified by the doctrine of implied powers.

31. How the Federal Constitution is Amended. The fathers, when providing for the betterment of the federal government, avoided the rigidity of the Articles of Confederation, under which an amendment could be adopted only with the consent of all the States, and established easier methods of amendment. The two processes by which the Constitution may be changed are:

(1) Congress may, by a two-thirds vote of both Houses, propose an amendment, and then submit it to the States for ratification **(122)**; (2) two thirds of the States may join in ordering Congress to call a National Constitutional Convention for the purpose of considering a desired amendment. In either case the amendment must be ratified by three fourths of the States before it can become a part of the Constitution **(123)**.

Although it is much easier to amend the Constitution now than it was under the Articles, still experience has

proved that it is extremely difficult in ordinary times to secure an amendment. The first eleven amendments came as the result of inordinate and intense State jealousy; the twelfth amendment came easily enough because it touched no great interest, and because it merely removed a palpable absurdity from the Constitution (p. 104); the last three amendments were secured only after a terrible war.

QUESTIONS ON THE TEXT

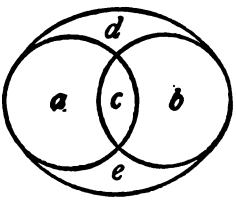
1. What efforts were made to strengthen the Confederation in its last days?
2. Give an account of the work of the Convention of 1787.
3. What tests did the framers apply to each grant of power given exclusively to the federal government?
4. What matters were placed entirely under the federal control?
5. What is a concurrent power? To what matters do the concurrent powers relate?
6. Enumerate the powers prohibited by the Constitution to the federal government.
7. Enumerate the powers prohibited to the States.
8. What four powers are prohibited to both governments?
9. What is the nature of the powers reserved to the State?
10. What is an implied power?
11. In what two ways may the federal constitution be amended?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Compromises of the Constitution.* The proceedings of the Convention of 1787 gave rise to some questions of such a serious nature that they could be settled only by compromise. Two of the greatest of these compromises related to the subject of representation in Congress, a subject which is fully treated in another place (p. 91). An important compromise related to commerce. The States of the North desired that Congress should have power to regulate commerce. The Southern States consented to this only upon the condition that no tax or duty should be laid on articles exported from any State (67). Another important compromise related to the slave trade. The South did not wish Congress to have the power of prohibiting the slave trade but it was finally agreed that the trade should be allowed until the year 1808 and that it should then come to an end. (Article I, Section 9.)

2. *The Amendment of Constitutions in Foreign Countries.* In England where a law of Parliament is the supreme law of the land there are no formalities whatever for amending the constitution. Any law of Parliament which changes existing law or custom is really an

amendment to the English constitution. In France when it is desired to amend the constitution the two branches of Parliament sit together as a National Assembly and jointly enact the proposed amendment as a law of the constitution. In the German Empire the constitution may be amended by an ordinary majority of the Reichstag (the lower branch of the legislature) but in the Bundersath (the upper branch of the legislature) where there are 58 votes, fourteen negative votes may defeat an amendment passed by the Reichstag.



3. Prepare a large chart exhibiting the powers of government under our federal system. Suggestion: Let the outer circle of the figure represent all the powers of government, all the powers that were at the disposal of the framers. In circle *a* write the powers exclusively federal; in segment *c* the concurrent powers; in segment *d* the powers prohibited to the federal government; in segment *e* the powers denied to the State. Reserve circle *b* for the powers of the State.

Discuss each of the powers granted exclusively to the federal government and give reasons for the grant.

4. Explain fully this sentence: "The United States is a representative, constitutional, federal republic."

TOPICS FOR SPECIAL WORK

1. The Origin of the Constitution. **3**: Vol. I, 19–31.
2. The Ratification of the Constitution. **1**: 44–50.
3. The Limitations of the Union. **14**: 236–242.
4. Federal and State Autonomy. **5**: 122–134.
5. The Nature of the Federal Government. **3**: Vol. I, 32–37.
6. The Present meaning of the Constitution. **1**: 69–73.

VII

THE STATE

32. The Powers of the State. After independence had been declared and the colonies had been transformed into States, each State found itself the possessor of almost unlimited political power. No State, however, at any time actually exercised all the powers of government. For example, no State ever made a treaty with a foreign country. From the moment of their separation from England the States relied upon a central government, the Continental Congress, to manage the affairs of war and peace and to establish foreign relations. Nevertheless, this central government was never strong, and in its last days it can hardly be said to have possessed any power at all. The States, therefore, went into the Convention of 1787 as masters of the situation. We have learned what powers they granted to the new federal government, what powers they expressly denied to it, what powers they expressly denied to themselves, and we have seen that they reserved for themselves all the powers they did not part with in the Convention. What were these reserved powers? What are the powers of the State? This question cannot be fully answered. The powers of the federal government can be enumerated, but the powers of the State can be indicated only in general terms. The framers provided liberally for the federal government, but they did not deprive the State of the privilege of managing its own affairs in its own way. The State government could still enter the home and prescribe the legal relations that were to

exist between husband and wife, between parent and child, between master and servant; it could still enter the domain of business with laws to regulate buying and selling, debt and credit, partnership and contracts, possession and alienation of property, wills and inheritances; it could still control all its local governments, county and city and town, and almost all private corporations (p. 54); it could still maintain its own schools and its own system of police; it could still administer justice in all ordinary cases and punish all ordinary crimes; it could still determine the religious, civil and political rights of its citizens and prescribe the qualifications of voters and conduct its elections.

33. The Conflict of Federal and State Authority. Under such a scheme of powers as has been ordained by the Constitution it is to be expected that State authority will sometimes clash with federal authority. The federal government within the circle of its powers is supreme and irresistible, and the State within its circle is independent of any higher power. Where two governments exercise political power within the same territory over the same people, disputes are almost certain to arise. Then again, the concurrent powers relating to taxation, elections and citizenship are sometimes a source of conflict. Moreover, there will sometimes be collisions between the two governments when each is exercising a power that appears to be strictly its own. For example, if in the exercise of its police power (p. 313) a State should pass a law forbidding the running of trains from one point to another within the boundaries of the State on Sunday, it might appear to be acting strictly within the scope of its authority, yet such a law would almost certainly clash with the federal regulations for carrying the mails. What is to be done in such a case? Shall the engineer move on with the train and carry the mails, or shall the State law be obeyed? The framers of the Constitution provided a method of determining all such questions. They established a *Supreme Court* (**105**) which

has the power of deciding between the two governments in every possible case that may arise (110).

34. Interstate Relations. Politically speaking, one State is quite independent of another. A State may establish such a government as seems to it best, providing that its constitution and laws are not contrary to the Constitution and laws of the United States, and providing that its government is republican in form. The republican form of government guaranteed to the State by the Constitution (120) is, broadly speaking, one in which the principle of representative democracy is recognized. The federal government under this guarantee would not permit an aristocracy or an oligarchy or a monarchy to be established within a State. When rival governments are set up within a State the federal government will decide which is the lawful government, and if necessary will assist in crushing the unlawful rival.

Although the political isolation which exists between the States is quite complete, nevertheless a State cannot treat another State precisely as if it were a foreign country. Under the Constitution there are several important interstate obligations:

(1) If one State recognizes a certain law or certain records, as of wills or deeds, as valid, all other States must recognize them as valid (115). If the authorities in Maine recognize a certain law of the State as being a good law the authorities of all the other States must recognize that law as being good *in Maine,* although the law need not be obeyed in the other States.

(2) A State must accord to a citizen of another State who comes within its borders all the rights and privileges which it accords to its own citizens (116). For example, a citizen of Pennsylvania can go into Illinois and move about and transact business on the same terms with the citizens of the latter State.

(3) When a criminal flees from a State in which he has

committed a crime into another State, the governor of the latter State is charged with the duty of assisting in the arrest of the criminal and in his return to the State in which the crime was committed (117). If, however, the governor of a State for any reason, good or bad, should refuse such assistance, there is no way to compel him to perform his duty. The Constitution has here issued a mandate with no provisions for its enforcement. The surrender of fugitive criminals, therefore, seems to rest quite as much upon interstate comity and courtesy as upon constitutional necessity. In practice governors seldom fail to do their duty in arresting and returning fugitive criminals.

35. Federal and State Relations. We may now revert to a question heretofore asked (p. 29) but not answered: Where is the line which divides the authority of the federal government from the authority of the State? The answer is found in the Constitution of the United States. If the Constitution be read aright the line which separates State from federal power can be traced as clearly by the mind as a visible physical line can be traced by the eye. On one side of this line are the powers relating to matters which concern the welfare of the whole body of the American people. These are the federal powers. If a State through presumption should cross the line and exercise any of these powers, it would not only trespass upon the authority of the federal government, but it would also impair the glory and greatness of the Union. On the other side of the line are those powers which relate to matters of local and personal concern. These powers belong to the State. If the federal government should cross the line and exercise any of the State powers it would be a usurper and an enemy of local self-government and individual rights.

Whether the State and federal relations established by the fathers will be maintained or not will depend upon the intelligence and political sagacity of the people. The

Congreſs of the United States:

AT THE THIRD SESSION,

Begun and held at the City of Philadelphia, on Monday the ſixth of December, one thouſand ſeven hundred and ninety.

An ACT *for the* ADMISSION *of the* STATE *of* VERMONT *into this* UNION.

THE State of Vermont having petitioned the Congreſs to be admitted a member of the United States, *Be it enacted by the* SENATE *and* HOUSE *of* REPRESENTATIVES *of the United States of America in Congreſs aſſembled, and it is hereby enacted and declared*, That on the fourth day of March, one thouſand ſeven hundred and ninety-one, the ſaid State, by the name and ſtile of "the State of Vermont," ſhall be received and admitted into this Union, as a new and entire member of the United States of America.

FREDERICK AUGUSTUS MUHLENBERG,
Speaker of the Houſe of Repreſentatives.

JOHN ADAMS, *Vice-Preſident of the United States, and Preſident of the Senate.*

APPROVED, February the eighteenth, 1791.

GEORGE WASHINGTON, *Preſident of the United States.*

DEPOSITED among the ROLLS in the OFFICE of the SECRETARY of STATE.

Th: Jefferſon *Secretary of State.*

The Act which Admitted the First New State

American citizen should keep a watchful eye upon all his representatives and hold them all to a faithful observance of the Constitution, not permitting them to rob either the federal government or the State of its rightful powers. We do not want the federal Union to become a consolidated state like France, where the powers of a central government extend to the smallest affairs of the smallest village. The government at Washington must not be empowered to issue orders to our governors and to the mayors of our cities as to how they shall conduct their affairs. If we do not preserve local self-government we shall hardly escape federal tyranny. On the other hand, States should not exceed their constitutional power and invade the rights of the federal government. We must not permit the Union to become the worthless fabric it was in the days of the Confederation. "The States and federal government, like the planets in their revolution around the sun, acting and acted upon, will move on in harmony and majesty only so long as a beautiful equilibrium between them is preserved!" The preservation of this "beautiful equilibrium" is the most sublime and important task imposed upon the American voter.

36. The Admission of New States. The federal government which went into operation in April, 1789, included within its authority eleven States — New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, and Georgia. In November, 1789, North Carolina, and in May, 1790, Rhode Island, ratified the Constitution and joined the Union. The federal union thus began its history with thirteen States. The Constitution provided for the growth of the Union by authorizing Congress to admit new States (**118**) and since 1790 thirty-three States have been admitted.[1] The terms upon which a new State

[1] When admitting a State into the Union, Congress usually determines the boundaries of the new State, authorizes the people to frame

may be admitted are determined by Congress, but when a State is once within the Union it is the equal of its sister States. With the consent of Congress a State may be divided into two or more States, and two or more States may join to form a single State; but no State once within the Union can withdraw from it. There is nothing said in the Constitution of the right of a State to secede, but since the Civil War the United States has been regarded as "an indestructible Union composed of indestructible States."

QUESTIONS ON THE TEXT

1. Indicate in general terms the powers of the State.
2. For what reason are there likely to be conflicts between State and federal authority? How are disputes between the State and the federal government settled?
3. What is the nature of the "republican form of government" to which a State is entitled?
4. What interstate relations are established by the Constitution?
5. How may you distinguish State authority from federal authority?
6. Why is it important that existing State and federal relations be preserved?
7. What are the provisions of the Constitution in respect to the admission of new States?

SUGGESTIVE QUESTIONS AND EXERCISES

1. On the chart suggested in the preceding chapter insert in circle *b* the most important State powers.

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a constitution and fixes the time and manner of admission. This has usually been done through what is called an enabling act, although in several cases States have been admitted without an enabling act. The dates at which new States have been admitted into the Union are as follows: Vermont, 1791; Kentucky, 1792; Tennessee, 1796; Ohio, 1803; Louisiana, 1812; Indiana, 1816; Mississippi, 1817; Illinois, 1818; Alabama, 1819; Maine 1820; Missouri, 1821; Arkansas, 1836; Michigan, 1837; Florida, 1845; Texas, 1845; Iowa, 1846; Wisconsin, 1848; California, 1850; Oregon, 1857; Minnesota, 1858; Kansas, 1861; West Virginia, 1863; Nevada, 1864; Nebraska, 1867; Colorado, 1876; North Dakota, 1889; South Dakota, 1889; Montana, 1889; Washington, 1889; Idaho, 1890; Wyoming, 1890; Utah, 1896; Oklahoma, 1907.

2. Prepare a ten-minute paper on "Our State." (Sketch briefly the history of your State; write of its size, its population, its industries, its resources, its schools, its cities, its great men, and give reasons why you are proud of it.)

3. Show how neighboring States have influenced your State in reference to (*a*) government, (*b*) religion, (*c*) occupation, (*d*) education, (*e*) political parties.

4. Of the following matters name those which come within the authority of the federal government: (*a*) Punishment for robbing the mails; (*b*) regulation of the speed of trains; (*c*) the suppression of a riot; (*d*) punishment for robbing a store; (*e*) the construction of a sewer; (*f*) the building of a school-house; (*g*) the construction of a battle-ship; (*h*) the repairing of a road; (*i*) the defense of a coast; (*j*) the improvement of a harbor; (*k*) the granting of a pension to a soldier; (*l*) the borrowing of money for public purposes; (*m*) the annexation of territory; (*n*) the maintaining of a military academy; (*o*) the protection of the public health; (*p*) the organization of a company of militia; (*q*) the controlling of the movements of a flying-machine; (*r*) the protection of an author in his rights; (*s*) the regulation of the descent of property; (*t*) the construction of a canal from Cleveland, Ohio, to Columbus, Ohio; the construction of a canal from Columbus, Ohio, to Chicago; (*u*) the regulation of the use of dynamite; (*v*) the regulation of wireless telegraphy; (*w*) the regulation of automobiles.

5. Bound your State and recite any interesting historical facts connected with its boundaries. Are the boundaries of your State natural or artificial?

6. How did your State receive its name? its nickname?

7. Has your State ever been a part of another State? Did it ever include another State? If it is one of the admitted States, how long was it a territory?

8. Could Congress admit a State which had a king for its executive (120)?

9. Could California be divided into two States (118)? Under what conditions could two States unite to form one State? Give reasons for the constitutional provisions governing the division and union of States.

10. Do you find in the Constitution authority given to the national government to acquire territory? Have we failed to embrace any opportunity of enlarging our boundaries? State the circumstances under which Louisiana was acquired.

11. Prepare an expansion map of the United States, marking off with colored lines the several purchases and cessions.

12. What three States were admitted into the Union without having passed through any territorial experience?

13. Explain this sentence: "The history of the United States from the settlement of Jamestown to the present time has been the history of the colonization of the West."

14. Trace the great influence of the Ordinance of 1787 upon our

political history in reference to (*a*) slavery, (*b*) self-government, (*c*) education.

15. As a special exercise, let one of the pupils prepare a ten-minute paper on "This Country of Ours," giving an account of its boundaries, its area, its river and mountain systems, its population, its industries, its resources, etc. Consult the article "United States" in any good encyclopedia.

16. *The Ordinance of 1787.*— When admitting new States Congress has always been guided in large measure by the provisions of the Ordinance of 1787. This famous law was passed in 1787 by the old Congress of the Confederation for the government of the Northwest Territory, the region out of which have been formed the States of Ohio, Indiana, Illinois, Michigan, Wisconsin and a part of Minnesota. The Ordinance provided that not less than three nor more than five States should be formed out of the Northwest Territory; that each State should have a republican form of government; that there should be no slavery; that religious liberty should be guaranteed; that education should be encouraged; that the Indians should be justly treated; that when one of the political communities should have 60,000 inhabitants it should be admitted into the Union with all the rights of a State; that until a community should be large enough for statehood it should be governed as a territory.

TOPICS FOR SPECIAL WORK

1. The State and the Federal Government. **1**: 89–91.
2. State Versus Federal Control. **1**: 82–88.
3. The Relation of the States with One Another. **7**: 131–155.
4. Interstate Relations. **5**: 272–289.
5. The Admission of New States. **5**: **263–271.**
6. The Working Relation of the National and State Governments. **3**: Vol. I, 325–341.

VIII

LOCAL GOVERNMENT

37. The Division of the Powers of the State. We have learned how governmental power is broadly divided between the federal government and the State. There is a further division to be studied. The State does not exercise directly through the agency of State officers all the powers which belong to it, but shares its powers with inferior governments which it creates, and which it equips with proper officers. These lower governments are called local, because they transact the public business of a locality only. The local governments which are found in all the States are counties and municipal corporations (villages, boroughs, towns, cities). In many States there is an additional local government known as the township — "town" it is usually called in New England.

The powers granted to the local governments are not the same in all the States, yet it may be said that as a rule the local government does the following things:

(1) It preserves the peace and good order of the locality.

(2) It supports the public schools.

(3) It cares for the public health.

(4) It helps the poor and unfortunate.

(5) It licenses trades and assesses and collects taxes.

(6) It opens and repairs roads and paves streets and builds bridges.

(7) It establishes and supports courts of lower grades.

(8) It erects public buildings.

It should be clearly understood that the local government is in all things dependent upon the State. The re-

lation of a city, for example, to the State is entirely different from the relation that exists between the State and the Union. The powers of the State are its own: the federal government cannot subtract from them nor add to them. The powers of a city are not its own: the State gives them and the State can take them away. What the State creates it can govern according to its own will. The State can deprive local officers of their positions and administer the affairs of the locality, the county, or city, or whatever it may be, with officers of the State government.

While it is true that the State has the power to send its officers into a locality and govern it without consulting its citizens, yet as a matter of fact the State does not use its power in this way. In practice the State allows the people of a community to elect their local officers and to conduct their local affairs largely according to their own notions. Any other policy would be contrary to the political instincts of the American people, and would excite the most bitter resentment. A denial of the right of local self-government would be an attack upon the principle of democracy. Where the people do not have their will in respect to their schools and roads and the other affairs of local concern, they do not enjoy fully the blessings of popular government.

38. The Three Grades of Government. Thus everywhere in the United States there are three grades of government in operation: (1) The federal government defends us against foreign foes, attends to foreign affairs, delivers and collects the mails, regulates the currency and foreign and interstate commerce, maintains federal courts to try cases that come under federal jurisdiction (p. 123), and collects the federal taxes. The federal government does these things in its own way with its own officers, and the people of the locality and of the State are not consulted. (2) The State government is responsible everywhere within its borders for the following things: for the protection of life,

liberty, property and reputation; for the punishment of crime; for the maintenance of justice; for the holding of elections; for the regulation of domestic and business relations; for the collection of State taxes; for the fulfillment of the constitutional guarantees contained in the bill of rights. The State is responsible for these things, and it does not surrender its power in reference to them. It either attends to them through the agency of its own officers, or it compels the local government to attend to them. (3) The local government attends to the matters enumerated in the preceding section.

39. The Relation of the State to Local Governments. One of the most important problems demanding the attention of the citizen refers to the relation that should exist between the State and the local governments. It is worth our while, therefore, to inquire carefully into this relation.

There is not a word in the federal Constitution about local government. The locality receives all its powers from the State constitution and the State legislature. Counties and townships are organized and governed under general laws passed by the legislature. All the counties and townships within the State have substantially the same kind of government and the same powers.

The government of cities and boroughs and villages is accomplished through the agency of municipal corporations. A *corporation* is a group of individuals authorized by law to act in respect to certain specified matters as one individual; or, it is a group of natural persons authorized to act as one artificial person. This artificial person known as a corporation lives forever, unless the power (the law) that created it chooses to destroy it or to limit the period of its existence; it has a name, and under this name it can sue and be sued in the courts like a natural person; with certain restrictions it can acquire property and borrow money like an ordinary person; it can make such by-laws

(local laws) as may be necessary to regulate its internal affairs, and these by-laws have all the force of law. Corporations are either private or public. A *private* corporation is one organized for the private profit or pleasure of the individuals who secure the incorporation. Railroads, banks, colleges, clubs, are examples of private corporations. *Public* corporations are organized for political purposes, for the promotion of the public welfare. Counties and towns and townships are public corporations in so far as they are permitted to hold property and to sue and be sued. The most conspicuous example of a public corporation, however, is the municipal (*municipium, town*) corporation. Wherever there is a community with a compact population requiring special governmental powers, the State gives this community a name and boundaries, organizes its citizens into a municipal corporation, and grants to it the right of municipal or local self-government.

The written instrument that specifies the rights and privileges of a corporation is its *charter*. The charter of a municipal corporation names the municipality, describes its boundaries, and states in great detail how the local government is to be organized, and what powers it is to exercise. The powers which a municipality enjoys under its charter may be such as are granted to municipalities under a general law of the legislature, or they may be specific powers granted by a special law.

The State legislatures through their power to grant charters to municipalities have, in most States, an almost complete control over cities and they exercise their power quite freely. They do not hesitate to change or amend a municipal charter or to revoke one altogether; they will reserve to themselves or will give to the governor the appointment of officers whose duties are of a strictly municipal character; they will raise the salaries of city officers without consulting the city authorities. They may even deprive a regularly elected mayor of his office and give it

to another. The habit of State interference with local matters is at times so strong as to threaten seriously the highly prized principle of local self-government.

40. Municipal Home Rule. In some States the constitutions are attempting to protect municipal rights by giving to the people of the city the privilege of framing their own charter, just as the people of a State frame their own constitution. Under this policy of municipal home rule the city would stand in somewhat the same relation to the State as the State does to the Union. Locality, State and nation would each be supreme in respect to those things which concern itself.

This is an attractive reform, but it suggests serious difficulties. Under our present system it is a long step downward, politically, from the State to the city, immeasurably longer than from the nation down to the State. The State in the limited sphere of its action is supreme: it may educate its youth ill, its laws may be unwise, its courts corrupt, and yet the federal government may not interfere. Shall we make the city as independent of the State as the State is of the federal government? We are told that the care of the streets, parks, sewerage, city lighting, water supply, the fire extinguishment system, and many details connected with sanitary and police administration, should be placed absolutely under the control of the city. But suppose the lighting in a city is so wretchedly poor that criminals thrive in the darkness, or that the police department is inefficient, and that the peace and security of the city are threatened, shall the State not interfere? Shall it make such a surrender of its rights as will prevent it from entering the city and lighting the streets properly and improving the police service? Such questions as these are constantly arising in connection with municipal government, and they indicate how difficult it is to determine precisely where State authority should end and local authority begin.

It is perhaps impossible to draw a clearly visible line

between State and local control. The State must keep a firm grasp upon all its parts, counties, townships and cities; and while it should not allow a part to operate against the welfare of the whole, it should nevertheless recognize and encourage the principle of local self-government or "home rule." Experience suggests the following rules for the guidance of the State in its dealings with cities:

1. All charters should be subject to the approval, at least, either of the legislature, or of a State executive officer.
2. The borrowing power of municipalities should be carefully restricted.
3. The taxing power should be limited to a certain per cent. of the assessed value of the property.
4. Reports of the expenditures of municipalities should be regularly made to the State government.
5. The municipalities should be given power according as they use it well.

QUESTIONS ON THE TEXT

1. How are the powers of the State divided?
2. Name the functions of the local government.
3. What is the policy of the State in reference to local government?
4. Give an account of the grades of American government.
5. How are counties and townships governed?
6. What is a corporation? What are the attributes of a corporation? What is a private corporation? What is a public corporation?
7. What is a municipal charter?
8. How does the legislature act in respect to the government of municipalities?
9. What difficulties lie in the way of municipal home rule?
10. Give five rules for the guidance of the State in its dealings with cities.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Unitary and the Federal State.* A useful distinction is sometimes made between a *unitary* and a *federal* State. In a unitary State the local governments exist by virtue of the authority and grace of the central government. Great Britain, France and Italy are unitary states and in these countries the existence of a county

or a province could be terminated at the will of the central government. For example, the English Parliament at any time could convert an English county into a park or a hunting ground or could otherwise blot out its existence. In a federal State, as in the United States or in Germany, the existence of a constituent division of the federation cannot be blotted out or terminated. For example, the government of the United States could not convert a State into a park or a hunting ground. A State of the United States, however, may be regarded as unitary in respect to its local governments.

2. *Municipal Home Rule.* In California "home rule" for cities is secured by the following clause in the State constitution: Any city containing a population of more than 3,500 inhabitants may frame a charter for its own government, consistent with and subject to the constitution and law of this State, by causing a board of fifteen freeholders — to be elected by the qualified voters of said city — whose duty it shall be within ninety days after such election to prepare and propose a charter for such city. Such prepared charter shall be submitted to the qualified electors of said city at a general or special election and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment — and if approved by a majority vote of the members elected to each house, it shall become the charter of such city and the organic law thereof. The charter, so ratified, may be amended, at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election, held at least forty days after the publication of such proposals for twenty days in a daily newspaper of general circulation in such city, and ratified by a majority of the electors voting thereon, and approved by the legislature as herein provided for the approval of the charter. Whenever fifteen per cent. of the qualified voters of the city shall petition the legislative authority thereof to submit any proposed amendment or amendments to said charter to the qualified voters thereof for approval, the legislative authority thereof must submit the same.

In Michigan a method of home rule similar to that of California is provided except that in Michigan the charter is not submitted to the legislature for approval, but to the Governor. Other States allowing cities to frame their own charters are Colorado, Minnesota, Missouri, Oregon, Oklahoma and Washington.

3. What are the provisions of the constitution of the State in reference to local government? Can the legislature pass a special law for the government of a city? Have the cities of the State the right to frame their own charters? If not, ought they to have this right?

4. In what way could the present constitution of this State be amended so as to give cities better government than they now enjoy?

5. What is the difference between a charter and a constitution?

6. In a city which of the following services should be rendered by the State and which by the local government? — (*a*) the regulation

of the sale of intoxicants; (*b*) the paving of the streets; (*c*) the regulating of the employment of children; (*d*) the grant of franchises (p. 216) to street railways; (*e*) the construction of sewers; (*f*) the holding of courts of justice; (*g*) the educating of children; (*h*) the lighting of streets; (*i*) the keeping of the peace; (*j*) the suppression of a riot; (*k*) the regulation of the use of arms; (*l*) the construction of waterworks; (*m*) the collecting of taxes; (*n*) the regulating of the hours of labor; (*o*) the operating of gas-works; (*p*) the inspecting of steam-boilers; (*q*) the inspecting of factories with the view of protecting the health of employees; (*r*) the maintaining of libraries; (*s*) the maintaining of parks; (*t*) the extinguishing of fires.

TOPICS FOR SPECIAL WORK

1. State Control of Cities. **11**: 85–109.
2. The Government of Cities. **3**: Vol. I, 629–639.
3. Municipal Problems. **1**: 366–367.
4. A Municipal Program. **1**: 361–366.
5. Home Rule of Cities. **7**: 336–344.
6. Results of Home Rule. **7**: 344–349.

IX

PARTY GOVERNMENT

41. The Origin of Political Parties. There are always differences of opinion as to how public affairs shall be managed. Shall the county have a new court-house? Shall the State compel parents to send their children to school? Shall the federal government assist the locality in the construction of roads? Such questions are bound to divide men into opposing groups. Now government acts through the agency of men as well as through the agency of laws, and if we want it to do a certain thing we must not only have the laws on our side, but we must also have the officers of government on our side. This means that those who favor a certain measure of political action must first become the possessors of political power. They must win the support of public opinion, and they must get votes enough to elect officers who are favorable to the proposed measures or policy. Out of the struggle for the possession of power the political party emerges. Men holding the same political views organize and work together for the purpose of securing control of the government, and when they have secured control they govern as a political party.

42. The Origin of Political Parties in the United States. The original division of voters into parties in the United States was brought about by the collision of two forces which are always opposing each other in a free country. One of these forces tends to bestow greater and greater power upon government. If certain phases of individual freedom result in some trifling inconvenience we are sure to find people who will instantly advise that government ad-

minister a remedy. When an affair of local government is badly managed there are always people to suggest that that affair be placed under the control of a larger and more central government. If the township does not manage its affairs well they would take its powers from it and give them to the county; if certain functions of the county are not faithfully performed they would have them performed by the State; if the State is remiss in anything they would place that thing under the control of the federal government. This tendency to take power from the local and lodge it with the central government has been called the *centripetal* force in politics.

In opposition to this centripetal, centralizing force are the people who, jealous of the powers of government, desire to limit them. These would lodge as little authority as possible with the central government and reserve as much as possible for the locality. They would have no interference with the individual except such as is necessary for the peace and safety of society. This tendency to restrict the power of the central government and enlarge that of the locality and of the individual has been called the *centrifugal* or decentralizing force in politics.

The discussion of the political questions which arose when the Constitution was put into operation offered an excellent opportunity for the free play of the centralizing and the decentralizing forces. Those who believed in a strong central government advocated a liberal interpretation of the "elastic clause" **(45)**. Foremost among these was Alexander Hamilton. That great man thought that Congress has a right to pass laws on any subject which relates to the general welfare and which requires the application of money. It is easy to see that under such an interpretation many things could be done by Congress which could not be done either under the enumerated or the implied powers of the Constitution. For example, under such a construction Congress would have the right to take

charge of the public schools. Those who held centripetal notions respecting government rallied around Hamilton and formed the *Federalist* party, or the party of *broad construction.*

The centrifugal tendencies of the time were reinforced by the genius of Thomas Jefferson. That statesman was jealous of the power of the federal government. He was afraid the central authority would encroach upon the rights of the States and of individuals. In order to prevent this he advocated a *strict construction* of the Constitution. He believed that the only proper subjects for the action of Congress were those enumerated in the Constitution. If a new power should be desirable he believed it should be secured by way of amendment and not by way of interpretation. Those who held the same views with Jefferson joined with him and organized the *Democratic-Republican* party, or the party of *strict construction.*

The line which divided the party of Hamilton from the party of Jefferson may be clearly traced throughout our history as the dividing line of two great parties, and it is the dividing line to-day. The Republican party is descended from the Federalists, and is the party of broad construction; the Democratic party comes in unbroken succession from the Democratic-Republican party, and is the party of strict construction.

43. The Elasticity of Party Principles. It must not be thought, however, that the Democratic party is always the enemy of loose construction or that the Republican party always opposes strict construction. Each of these parties, as we shall see hereafter (p. 186), is a mighty organization, and the leaders of each are always striving for the supremacy. Victory depends upon votes, and in order to get votes either party will sometimes advocate measures which are not in strict accordance with its historic principles. This is the way of political parties when they have grown power-

ful. For the sake of control they will adapt their principles to the issues of the time.

It is a fortunate circumstance that the principles of a great political party are elastic. New political issues are always arising, and these issues must be settled by the action of a party, either by one of the old parties or by a new organization. To organize a third party and carry it to complete victory is a task that has not been accomplished once in our history. We have had many third parties, but the history of them all is the same: they have all been absorbed by one or the other of the two great historic parties. But while the old party was absorbing the new party it was at the same time absorbing the issues of that party. When the absorption of a new issue by an old party results in success, as it frequently has resulted, the people attain their object much more quickly than they would by the tedious process of building up a new party.

44. The Individual Citizen and His Party. Ours is a government by party: no important policy of government, whether federal, State, or local, can be adopted without the sanction of a party, and it seems that no one can be elected to an important office who has not first received the endorsement of a party. Thus far no one has been able to show how popular government on a large scale can be conducted without the aid of parties.

Since we must have parties and must accomplish our political purposes through them, the relation of the individual to his party presents itself as a serious problem of citizenship. For reasons known to himself a man has been acting with a certain party: under what circumstances may he as a good citizen leave his party? His entrance into the party was a matter of choice, and he is as free to withdraw from it as he was to enter it. He is under no legal obligations to remain in his party, but is he not under a moral obligation to withdraw from it

when his judgment and his conscience tell him that its course is wrong and that the course of another party is right? When party loyalty leads a man into voting for dangerous measures and dishonest candidates he is not a free citizen, but is the victim of a self-imposed despotism. Party loyalty is a good thing, but loyalty to the interests of one's country is an infinitely better thing; and when a man is convinced that his party is pursuing an unpatriotic course he should break away from it, despite the cracking of the party lash.

QUESTIONS ON THE TEXT

1. What is the origin of political parties?
2. Describe the centrifugal and centripetal forces of politics.
3. What were the political views of Alexander Hamilton? of Thomas Jefferson?
4. How are new issues brought before the people?
5. In what relation do the parties stand to government?
6. In what relation does the individual stand to his party? When should this relation be severed?

SUGGESTIVE QUESTIONS AND EXERCISES

1. State whether a Democrat who was guided solely by the traditions and principles of his party would favor or oppose: (*a*) the control of railroads by the federal government; (*b*) the issue of money by State banks; (*c*) the management of elections by the federal government; (*d*) the control of telegraph lines by the State government; (*e*) the planting of colonies by the federal government; (*f*) the support of the public schools by the federal government; (*g*) the ownership of mines by the State government; (*h*) the control of cities by the federal government; (*i*) the coöperation of the federal government with local government in road-building.
2. What influences besides party principles lead one to vote for this or that party?
3. Give reasons why it is best that the party in power should have opposition even though its principles are right.
4. Compare the last National Democratic platform with the last National Republican platform, and point out the chief difference in the principles of the two parties. What principles are advocated in the platform of the Socialist party?
5. How many people voted for the Democratic party in the last presidential election? How many for the Republican party? If the Republican vote for that year should be represented by a line one

yard in length, how long would be the line which should represent the Democratic vote? How long the line representing the Prohibition vote? the Populist vote? the Socialist vote?.

6. Name a few of the great politicians who have figured in the history of this country. Who are the great politicians of the present time?

7. What is a statesman? a partizan? a trimmer? a mugwump? an independent? a henchman?

8. Distinguish between a "boss" and a leader; a statesman and a demagogue.

9. Define *faction, cabal, junto, "ring," clique.*

10. Under what circumstances is a man justified in deserting his party?

TOPICS FOR SPECIAL WORK

1. False Leaders. **2**: 301–312.
2. Party Loyalty. **10**: 265–269.
3. Political Parties and their History. **3**: Vol. II, 3–19.
4. The Parties of To-day. **3**: Vol. II, 21–30.
5. The Party System. **4**: 193–215.

X

CIVIL LIBERTY

45. Civil Liberty Defined. We have now described the several devices by which our political system is operated, and have described the nature of the power which has been assigned to each of the three grades of government. For what purpose have these ingenious devices been invented? Why have these nice adjustments of power been made? In order that we may be secure in our civil liberty. And what is civil liberty? It is the liberty which a man enjoys in civil society; it is liberty under law. The desire for freedom is implanted in every human breast. History is largely an account of man's struggle for freedom, and the greatest lesson which history has for us teaches that man ought to be free. But there must be limits to his freedom. Where there is government there must be restraints upon the will and upon the desires. The only liberty that is possible in society is civil liberty, which has been defined as natural liberty so far restrained (and so far only) as is necessary and expedient for the public good. The restraints regarded as necessary and expedient for the public good are not the same in all countries. Civil liberty, therefore, is not everywhere the same: in Germany it is one thing; in France it is another thing; and in the United States it is still another thing.

46. The Growth of American Civil Liberty. The rights of our citizenship seem to come to us, like the air and the sunshine, as a matter of course, but it seemed otherwise to those ancestors of ours who secured these rights. To them

civil liberty came as the result of hard-fought battles. When we read the bill of rights in one of our constitutions, where our liberties are itemized, our hearts would throb with gratitude did we know the suffering and the sacrifice which each item has cost. The history of American liberty cannot be given here in full, but we must find room for its outlines:

I. *The Great Charter.* The story of our civil liberty may conveniently begin with an account of the Great Charter. King John of England had been acting in a tyrannical and unpatriotic way, and the leading men of England, in order to protect themselves from his cruelty and oppression, met (1215 A. D.) at Runnymede, near London, and declared the rights of Englishmen in a formal document which they compelled the king to sign. This document was the famous *Magna Carta.* "One copy of it," says Green, "still remains in the British Museum, injured by age and fire, but with the royal seal still hanging from the brown shrivelled parchment. It is impossible to gaze without reverence on the earliest monument of English freedom, which we can see with our own eyes and touch with our hands, the Great Charter, to which, from age to age, patriots have looked back as the basis of English liberty."

Since the Great Charter is the basis of English liberty, it is the basis also of American liberty. It consists of a preamble and sixty-three clauses. The clauses of lasting interest are the following:

1. "Common Pleas shall not follow the king's court, but shall be held in some certain place." (John had been dragging suitors for justice about from post to pillar, causing them great inconvenience and expense.)

2. "A freeman shall be fined for a small offense after the manner of the offense; for a great crime after the heinousness of it." (Making the punishment suit the crime.)

3. "No scutage (land tax) or aid (contribution) shall

be imposed except by the common council of the nation." (No taxation without representation.)

4. " No freeman shall be taken or imprisoned or disseized, or outlawed, or exiled, or in any way destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land." (Due process of law and trial by jury.)

5. " To none will we sell, to none will we deny or delay right or justice." (Habeas corpus.)

6. " The city of London shall have all its ancient liberties and free customs, and so of all other cities, boroughs, towns and ports." (Local self-government.)

Swift and impartial justice, punishment according to the offense committed, taxation according to the wishes of representatives of the people, trial by jury, habeas corpus, local self-government — these are the grand features of the Great Charter. " To have produced it, to have matured it, to have preserved it, constitute the immortal claim of England upon the esteem of mankind. Her Bacons and Shakespeares, her Miltons and Newtons, with all the truth which they have inspired, are of inferior value when compared with the subjection of men and of their rulers to the principles of justice, if indeed it be not more true that these mighty spirits could not have been formed except under equal laws, nor roused to full activity without the influence of that spirit which the Great Charter breathed over our forefathers." [1]

II. *The Petition of Right.* It is easy to declare human rights, but it is difficult to defend and preserve them. John's successors confirmed the Great Charter whenever they were compelled to do so, but they violated its provisions whenever they dared. During the fifteenth and sixteenth centuries the aggressions of royalty threatened to make Magna Carta a dead letter; but in the seventeenth century the spirit of English liberty revived. When the

[1] Mackintosh, " History of England," Vol. I, 222.

Stuarts began to trample under foot the most precious rights of Englishmen the people revolted. A long and bloody conflict followed. One king lost his life, another his crown, and thousands of citizens fell in civil strife. Out of the contest there were evolved two liberty documents of the highest importance. The first of these is the *Petition of Right* which Parliament sent to Charles I in 1628 and compelled him to sign. This famous constitutional law — for it, like the Great Charter, must be regarded as part of England's constitution (p. 26) — recites the rights of the people, and protests against the wanton infringements which were being made by the king. Among the misdeeds of the king were the quartering of troops in the homes of private citizens. The petition prays: "That your majesty will be pleased to remove said soldiers and mariners, and that your people may not be so burdened in time to come." Another complaint refers to the practice of putting citizens to death after a trial conducted by the soldiery. The petition prays: "That commissions by martial law be revoked and annulled." The Petition of Right, therefore, declared anew formally the ancient rights of Englishmen, and also enriched their civil liberty in two particulars: first, it forbade the quartering of troops upon private citizens; and, second, it put an end to the trial of private citizens by military courts.

III. *The Bill of Rights.* No sooner had the Cromwellian power been overthrown and the old monarchy restored under Charles II, than the perversity of the Stuart house renewed itself. James II attempted to establish a permanent despotism, but he was driven from his throne before his purpose was accomplished. When his successor, William III, was invited to be king, Parliament, as an act of precaution, declared (in 1689) the conditions upon which the crown was to be held. This declaration, known as the *Bill of Rights,* was the second liberty document produced

by the conflict between the Stuarts and the people, a document which has been called "the third great charter of English liberty, and the coping-stone of the constitutional building." The most important of its declarations are the following:

(1) That laws shall not be suspended or repealed, and that taxes shall not be levied without consent of Parliament.

(2) That the right of petition shall not be denied.

(3) That a standing army shall not be kept in time of peace.

(4) That subjects shall not be deprived of the right of carrying arms.

(5) That freedom of speech and debate in Parliament shall not be impeached or questioned in any place out of Parliament.

(6) That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(7) That Parliament ought to assemble frequently.

IV. *The Declaration of Independence.* The rights won in England accrued of course to the English colonists in America. When the time for independence arrived the Americans had several important items to add to the list of human rights. These they announced in the Declaration of Independence. They declared:

(1) That all men are equal.

(2) That governments derive their just powers from the consent of the governed.

(3) That for good reasons the people may abolish the old form of government and institute a new form.

In these three propositions are wrapped up the whole doctrine of democracy. In them we see equality before the law, universal suffrage, democratic government, direct legislation, and constitutional conventions. When we consider the world-wide influence of these three declarations

we must regard them as the greatest enlargement of civil liberty recorded in the history of politics.

V. *State Constitutions.* When the people of the revolting colonies were ready to begin government on their own account, the Great Charter, the Petition of Right, the Bill of Rights and the Declaration of Independence served as texts for a new and complete declaration of American civil liberty. This declaration was made in the State constitution of the newly formed States. If you will examine the bill of rights in any State constitution — the newer States have fashioned their constitutions after those of the older States — you will find that it declares the rights affirmed in the three great English liberty documents and in the Declaration of Independence. If it does more than this it simply adds several additional rights which have been evolved from American experience.

VI. *The Federal Constitution.* We have seen that the first ten amendments were hurriedly added to the Constitution as a check upon the power of the federal government. The first eight of these amendments bear a strong resemblance to the bill of rights of a State constitution, and are regarded as the bill of rights of the federal Constitution. It ought to be clearly understood, however, that the rights declared in these amendments do not belong to the American citizen unless they are also declared in the constitution of the State in which the citizen lives. The federal government cannot deprive a citizen of any of these rights, but the State can. For example, Congress cannot abridge the freedom of speech, but a State legislature can do so if the State constitution does not forbid. The Federal government cannot guarantee the rights which the Constitution forbids it to infringe. It is to the State constitution we must look for most of the positive guarantees of our civil liberty.

47. Constitutional Liberty and its Preservation. Thus it is seen that civil liberty in America means constitutional

liberty. In the constitutions we find set down in black and white precisely the rights we are to enjoy. The constitutions, however, do not create civil liberty. Liberty is not an artificial creation of a convention. It is a divine gift bestowed only upon those who make themselves worthy of it by being true to the nobler impulses and longings of their nature. All the constitution can do is to give liberty a voice. It states in plain words the rights which the people claim. When rulers are tempted to act tyrannically the solemn prohibitions of the constitution bid them pause; when the majority is tempted to ignore the rights of the minority or of the individual, the words of the constitution stare it in the face. If people or rulers violate the bill of rights, then the constitution is a mockery and civil liberty does not exist.

Constitutions do not create rights, nor do they preserve them. We have seen that American civil liberty is the fruitage of many centuries of costly and patriotic endeavor. As it has been acquired, so will it be maintained. The preservation of human rights will always depend upon the watchfulness and zeal of those who love freedom. If we do not love freedom well enough to fight for it, if we prefer the quietude of despotism to the boisterousness of liberty, we may be sure that the lovers of power will sooner or later fasten a despotism upon us. We ought, therefore, to cultivate the habit of keeping our eyes upon our constitutions, and protesting whenever a right is denied, and we ought not to rest content until the right is regarded and the violator of the constitution punished.

QUESTIONS ON THE TEXT

1. Define civil liberty.
2. What is the Great Charter? What are its important provisions?
3. What is the Petition of Right? Name its most important provisions.
4. What is the Bill of Rights? Name its most important declarations.

5. What great principles of democracy are declared in the Declaration of Independence?

6. Of what is the bill of rights in the State constitution composed?

7. What is the origin of the bill of rights of the federal Constitution? How does this differ from the bill of rights of a State constitution?

8. Explain the statement that civil liberty is constitutional liberty.

9. How may constitutional liberty be preserved?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Prepare a bill of rights for a State constitution, using Magna Carta, the Petition of Right, the Bill of Rights, and the Declaration of Independence as a basis, and after it is prepared compare it with the bill of rights of your State constitution, and with the first eight amendments of the federal Constitution.

2. Bring into the class for inspection a facsimile of Magna Carta.

3. Prepare a five-minute paper on "The Reign of John." Green's "Short History," pp. 147–156.

4. Prepare a five-minute paper on "Charles First and the Petition of Right." Green, pp. 485–495.

5. In what respects are men equal?

6. What great names are connected with the cause of American liberty?

Hints on Reading: Civil Liberty, by Francis Lieber; The Declaration of Independence by Herbert Friedenvald.

XI

CIVIL RIGHTS AND DUTIES

48. Civil Rights and Political Rights. The rights flowing from American civil liberty may be divided into two classes, civil rights and political rights. Civil rights are those which a person enjoys as a private citizen, as an individual. They are enjoyed under the authority and sanction of government; but they are not related to the subject of government. Political rights are those which belong to a citizen regarded as a participator in the affairs of government: they may be called the public rights of citizenship. Citizenship does not necessarily carry with it the whole body of civil liberty. Minors and incapables do not have all the civil rights, and the political rights belong to only about one fifth of the total number of citizens.

49. Who are Citizens. Who are American citizens? This question was left in doubt by the Constitution until the adoption of the fourteenth amendment in 1868. That amendment declares (150) that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." Under this definition the following have been adjudged to be citizens of the United States:

(1) All persons born in the United States excepting the children of diplomatic agents and of hostile aliens.

(2) Children born in foreign countries whose parents at the time of their birth were citizens of the United States.

(3) Women of foreign birth married to citizens of the United States.

(4) Indians who pay taxes and no longer live in tribal relations.

(5) Naturalized persons.

Persons who do not belong to any of the above classes are aliens (*alienus*, a foreigner). There are already several millions of aliens living in our midst, and thousands of foreigners enter the United States every week. Aliens may become citizens by complying with the regulations prescribed by Congress (48) for *naturalization*,[1] the process by which foreigners lose citizenship in one country and acquire it in another.

50. The Civil Rights of State Citizenship. The rights of American citizenship flow from two sources, from the State and from the nation. Since each State in a large measure determines for itself the character of the civil liberty that is to be enjoyed within its borders, the rights of an American citizen are not everywhere the same. As we travel through the States our rights change every time we pass from one State into another. When the citizen of one State enters another State he has the rights of the citizens of that State (116), and those rights only. There are, however, certain civil rights which are enjoyed in every State in the Union and which may be called the civil rights of State citizenship. These are the rights guaranteed in the State constitutions. In the constitution of almost every State it is declared:

(1) That all men have the right of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness:

(2) That men have a right to worship God according to the dictates of their own conscience, and that no preference by law should be given to any religion, and that no

[1] For process of naturalization, see note on page 78.

person should be disqualified for office on account of his religious belief:

(3) That trial by jury is a right inviolate.

(4) That the printing-press shall be free, and that every citizen may freely print, write and speak on any subject, being responsible for the abuse of this privilege:

(5) That people shall be secure in their persons, houses, papers and possessions against unreasonable searches and seizures, and that no warrant to search any place or seize any person shall issue without probable cause:

(6) That in all criminal prosecutions the accused has a right to be heard by himself and his counsel, to meet witnesses face to face, to compel witnesses who are in favor to come to court and testify, and to a speedy trial by an impartial jury:

(7) That no person can be compelled to give evidence against himself, nor be deprived of his life, liberty or property unless by the law of the land:

(8) That no person for the same offense shall be twice put in jeopardy of life and limb:

(9) That all courts shall be open and that every man shall have justice without sale, denial or delay:

(10) That excessive bail shall not be required, nor excessive fines be imposed, nor cruel punishment inflicted:

(11) That all prisoners shall be bailable by sufficient sureties, unless for capital offenses:

(12) That the writ of habeas corpus [2] shall not be suspended unless in time of rebellion or invasion:

(13) That there shall be no imprisonment for debt, unless in cases of fraud:

(14) That citizens have a right to assemble in a peaceable manner and to apply to the rulers for a redress of grievances:

(15) That the military shall at all times be kept in strict subordination to the civil power:

[2] See note, page 78.

(16) That no soldier in time of peace shall be quartered in any house without the consent of the owner.

51. The Civil Rights of Federal Citizenship. The first section of the fourteenth amendment to the Constitution (**150**) creates a distinct federal citizenship, and provides that no State shall abridge the privileges of that citizenship. What are the privileges which a citizen of the United States enjoys and which no State can abridge?

At present it is possible to enumerate the following as the rights of federal citizenship,— rights which flow from the Constitution, which belong to every citizen of the United States, and which cannot be denied by State authority:

I. *Due Process of Law.* No person in the United States shall be deprived of life, liberty or property without due process of law. Here is a right which no State can abridge (**151**) and which the federal government itself cannot deny (**152**). A person seeking justice, whether in civil or criminal cases, under his right of due process may demand (1) that there be a court of law for the trial of his case; (2) that the proceedings of the trial be regular; (3) that the trial be fair. What the regular course of procedure in a State court shall be is a matter for the State itself to determine; but after the State has once decided upon the course that justice shall take, after it has once established the processes of law, it cannot deprive any person of the benefits that arise from those processes.

II. *Equal Protection of the Laws.* "Every person within the jurisdiction of any State, whether he be rich or poor, humble or haughty, citizen or alien, is assured of the protection of equal laws (**153**) — applicable to all alike and impartially administered without favor or discrimination." (*Guthrie.*)

III. *Protection on the High Seas and in Foreign Countries.* A citizen of the United States, in whatever part of the world he may be, is entitled to protection against in-

justice or injury, and this protection is a right of federal citizenship, and is extended by the federal government.

IV. *State Citizenship.* Every citizen of the United States has a right to become a citizen of a State by a *bona fide* residence therein, and as a citizen of the State he has all that large body of rights which usually belongs to State citizenship.

52. The Duties of Citizenship. The duties of citizenship are always equal to its rights. If I can hold a man to his contracts, I ought (*I owe it*) to pay my own debts; if I may worship as I please, I ought to refrain from persecuting another on account of his religion; if my own property is held sacred, I ought to regard the property of another man as sacred; if the government deals fairly with me and does not oppress me, I ought to deal fairly with it and refuse to cheat it; if I am allowed freedom of speech, I ought not to abuse the privilege; if I have a right to be tried by a jury, I ought to respond when I am summoned to serve as a juror; if I have a right to my good name and reputation, I ought not to slander my neighbor; if government shields me from injury, I ought to be ready to take up arms in its defense.

Civil rights are inseparable from civil duties; the continued and full enjoyment of the former depends upon the fulfillment of the latter. Since duty is largely a matter of morals, good citizenship also would seem to be a question of morals. In the last analysis this is true. After all is said, good citizenship is reached only by the rough path of duty, and men will tread this path not because a legislature commands them, but because conscience leads them on.

QUESTIONS ON THE TEXT

1. What is meant by *civil* rights? *political* rights?
2. What classes of people are citizens of the United States?
3. What is an alien? How may aliens become citizens?

4. Explain how the rights of citizenship may differ in the different States.

5. Enumerate the civil rights guaranteed by the State.

6. What effect did the adoption of the fourteenth amendment have upon the character of citizenship in the United States?

7. Enumerate and describe the rights that grow out of federal citizenship.

8. What is the relation of civic right to civic duty? Name some of our civic duties.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *Naturalization.* The process of naturalization is as follows: (1) At least two years before he can be admitted as a citizen the alien must appear before a State or a federal court and take an oath that it is his intention to become a citizen of the United States and "to renounce forever all allegiance and fidelity to any foreign prince or state and particularly to the one of which he may at the time be a citizen or subject." He must also swear to support the Constitution of the United States.

(2) Not less than two years nor more than seven years after this declaration of his intentions the alien may apply to a federal or State court for full admission as a citizen. If the judge of the court is satisfied that the alien is able to speak the English language and write his own name, that he has resided in the United States for five years, and that he is a person of good moral character, full citizenship will be conferred. A person thus naturalized has the same rights as native born citizens of the United States except that he cannot become the President or Vice-President of the United States (**86**). The children of naturalized persons are considered as citizens if they were under twenty-one years of age and were dwelling in the United States at the time of the naturalization of their parents. Alien Chinese and Japanese are not entitled to be naturalized. Persons professing the doctrines of anarchy and openly opposing all form of organized government are also refused the gift of naturalization.

2. *Habeas Corpus.* Whenever a man is placed in confinement against his will and the fact is made known to a judge of a court, the judge, unless he knows the confinement is legal, is bound, upon application, to issue *immediately* a writ, called *habeas corpus*, commanding the prisoner to be brought before him for examination. If there seems to be cause for the detention of the prisoner he is sent back to prison to await a full trial; if there seems to be no cause he is set free.

3. Examine the Constitution for answers to these questions: (1) Can a person be compelled in a federal court to be a witness against himself (**138**)? (2) What are the rights of an accused person in a federal court (**139**)? (3) What is the rule in federal courts in reference to witnesses (**140**)? (4) What is the rule in reference to trial by jury (**141**)? (5) In reference to bail (**142**)?

4. Under the fourteenth amendment what are the rights of an

alien? Enumerate your individual rights as these are declared in the constitution of your State.

5. Political philosophers frequently speak of *natural* rights. What is the root meaning of the word *natural*? Name the rights which you would be inclined to class as natural.

6. What is meant by the "inalienable rights" mentioned in the Declaration of Independence?

7. Joined with every right there is a duty. Name the duty which belongs to each of the rights of American citizenship.

8. Discover, if you can, a social or civil right to which there is not a duty attached.

9. Has a student a right to study so hard that his health is injured thereby?

10. Do you as minors enjoy all the civil rights? Name those of which you are deprived.

11. What does the constitution of the State say about aliens?

TOPICS FOR SPECIAL WORK

1. Citizenship. **5**: 241–249.
2. Duties of Citizenship. **15**: 525–530.
3. Rights and Immunities of Citizenship. **1**: 97–105.
4. The Writ of Habeas Corpus. **1**: 105–110.
5. Rights of Citizenship under 14th Amendment. **5**: 180–189.

XII

POLITICAL RIGHTS AND DUTIES

53. The Origin of Political Rights. Political rights invest the citizen with the privilege of participating in government, and consist of the right of voting at elections and of holding public office. These rights are an outgrowth of the struggle for civil rights. In that struggle the people learned that a privileged ruling class could not be trusted. They saw that if their rights were to be respected, government must pass either into their own hands or into the hands of their chosen agents. Therefore in order that they might protect their civil rights they demanded the reins of government. At first the privilege of voting and holding office was granted only to the leaders among the people, to the high-born and wealthy and learned. Later a middle class consisting of small property-holders, tradesmen and artisans and professional people, saw that its interests would be promoted by a participation in government. It demanded political rights and obtained them. Finally the propertyless men and the ignorant men began to think that their civil rights would be worth more to them if they had the right to vote. They asked for the right and it was granted to them. From first to last, therefore, political rights have grown out of men's efforts to preserve and promote their civil rights.

54. The Elective Franchise. The suffrage, or the right of voting, is sometimes regarded as a natural right, as a right inherent in citizenship. Men will say that you might as well deny the right of acquiring property or of defending one's person from attack, as to deny the right of suf-

frage. This view is justified neither by the facts of history nor by the present policy of government. The right to vote is a *franchise* or privilege granted by the state to certain classes of citizens and the selection of the classes who are to enjoy the privilege is a matter of expediency and public policy.

55. Political Rights Conferred by State Authority. Authority for granting the suffrage and defining the qualifications of voters resides chiefly in the State. The only restriction upon the power of the State to regulate the elective franchise is found in the fifteenth amendment to the Constitution, where it is declared that the right of citizens of the United States to vote shall not be abridged by any State on account of race, color or previous condition of servitude (**159**). As long as the State does not violate this amendment it is free to regulate the suffrage in its own way.

56. The Qualifications of Voters. When we observe how widely the political conditions in one State differ from those in another, and consider how great is the opportunity for a variety of regulations in reference to voting, the laws governing the suffrage throughout the Union seem to be remarkably uniform. This uniformity is due in part to democratic spirit of equality, and in part to the provisions of the fourteenth and fifteenth amendments.

In all the States the age qualification for voting is twenty-one years; in forty-one States only males can vote at general elections; in all the States a previous residence within the State varying from six months to two years is required; in thirty-four States a voter must be a citizen of the United States; in twelve States aliens may vote; in all the States but nine there is an absence of anything like an educational qualification. In all the States certain classes of persons are excluded from the privilege of voting. Chief among these are lunatics, idiots, paupers and convict criminals.

57. Equal Suffrage. In recent years the question of extending the suffrage to women has arisen in legislatures and in the constitutional conventions, and in some parts of the country there is a strong public opinion in favor of allowing women to vote. In Colorado, Idaho, Utah, Wyoming and Washington women may vote at all elections. Where questions of taxation or education are involved there seems to be a wide-spread disposition to give women an opportunity to be heard. Since women pay taxes, and since they are as deeply interested in the public schools as men can be, it is quite generally conceded that they should not be entirely ignored as taxpayers, and that they should have a voice in the management of schools. In accordance with this sentiment, many States are granting to women the right to vote on certain financial questions and in the selection of school officials. More than half the States permit women to participate in some degree in public affairs and the movement for equal suffrage for men and women seems to be gaining ground.

58. The Right of Holding Office. The right of holding office is more indefinite than the right of suffrage. It may be stated as a general rule that any one who may vote is qualified to hold office. It does not follow, however, that because one may not vote one may not hold office, for women often hold office even in States in which they have no right to vote. Qualifications for the occupants of most offices are prescribed by law, and these of course must be met. When there are no special legal qualifications attached to an office it may usually be held by any one who can get himself elected or appointed to it. A person who, as a State official, has taken an oath to support the Constitution of the United States and who has afterwards joined in rebellion against the United States is debarred from holding office (**155**).

59. Duties of a Voter. The American voter should regard himself as an officer of government. He is one of the

members of the *electorate,* that vast governing body which consists of all the voters, and which possesses supreme political power, controlling all the governments, federal and State and local. This electorate has in its keeping the welfare and the happiness of the American people. When, therefore, the voter takes his place in this governing body, that is, when he enters the polling-booth and presumes to participate in the business of government, he assumes serious responsibilities. In the polling-booth he is a public officer charged with certain duties, and if he fails to discharge these duties properly he may work great injury. What are the duties of a voter in a self-governing country? If an intelligent man will ask himself this question and refer it to his conscience, as well as deliberate upon it in his mind, he will conclude that he ought at least to do the following things:

(1) To vote whenever it is his privilege.

(2) To try to understand the questions upon which he votes.

(3) To learn something about the character and fitness of the men for whom he votes.

(4) To vote only for honest men for office.

(5) To support only honest measures.

(6) To give no bribe direct or indirect, and to receive no bribe direct or indirect.

(7) To place country above party.

(8) To recognize the result of the election as the will of the people and therefore as the law.

(9) To continue to vote for a righteous although defeated cause as long as there is a reasonable hope of victory.

QUESTIONS ON THE TEXT

1. What has been the origin of political rights?
2. How does the right of voting differ from a natural right? What is the policy of governments in reference to the suffrage?

3. What restrictions are placed on the State in the matter of granting suffrage?
4. State the qualifications which are usually placed upon the suffrage.
5. To what extent does female suffrage prevail in the United States?
6. What is the general rule in reference to the right of holding office?
7. In what sense is a voter an officer of government?
8. Enumerate the duties of a voter.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Examine the constitution of your State for answers to the following questions:
   (1) What is the qualification of voters as to age? as to residence — (*a*) in the State? (*b*) in the county? (*c*) in the election district? as to sex? as to education? as to the possession of property? as to citizenship? Can an alien vote in this State?
   (2) What special immunities have voters on election day?
   (3) What persons are disqualified to vote in this State?
2. Are the qualifications and disqualifications mentioned in the State constitution all just and proper? If not, state where you would have changes made.
3. After careful thought state the arguments for and against an educational qualification for voting.
4. Discuss the subject of female suffrage from the standpoint (*a*) of justice, (*b*) of woman's fitness for voting, (*c*) of the effect upon politics, (*d*) of the effect upon woman herself.
5. Give the meaning of the following words: *elector, resident, inhabitant, denizen, citizen, subject.*
6. Would you vote for or against a bill that compelled citizens to vote? Give reasons for your answer. What proportion of the voting population of the United States voted at the last presidential election?
7. Of the duties of the voter mentioned in the last section which are the easiest to fulfil?
8. When you shall become qualified do you intend to vote? What personal advantage may you reap from voting? State the losses that society would sustain if you should be deprived of your right to vote.
9. What influence and considerations will probably determine your vote?
10. Suppose the people of an absolute monarchy enjoyed to the fullest extent all civil rights, would they profit any by having the political rights granted to them?
11. What are the constitutional provisions in this State in reference to holding public office?

12. Prepare a paper on "The Results of Equal Suffrage in Colorado." Consult "Equal Suffrage," by Helen L. Sumner.

TOPICS FOR SPECIAL WORK

1. Political Rights. **2**: 63–103.
2. Suffrage on Elections. **15**: 423–430.
3. Qualifications for Voting. **23**: 10–21.
4. The Responsibility of the Voter. **1**: 126–128.
5. The Extension of the Suffrage. **1**: 111–113.

PART II

THE ORGANIZATION OF THE AMERICAN GOVERNMENT: THE FORM

XIII

THE ORGANIZATION OF CONGRESS

Introductory. Now that the fundamental principles of our government have been learned, we may pass to the subject of its organization. We shall study the organization of (1) the federal government, (2) the State government, (3) local government, and (4) political parties.

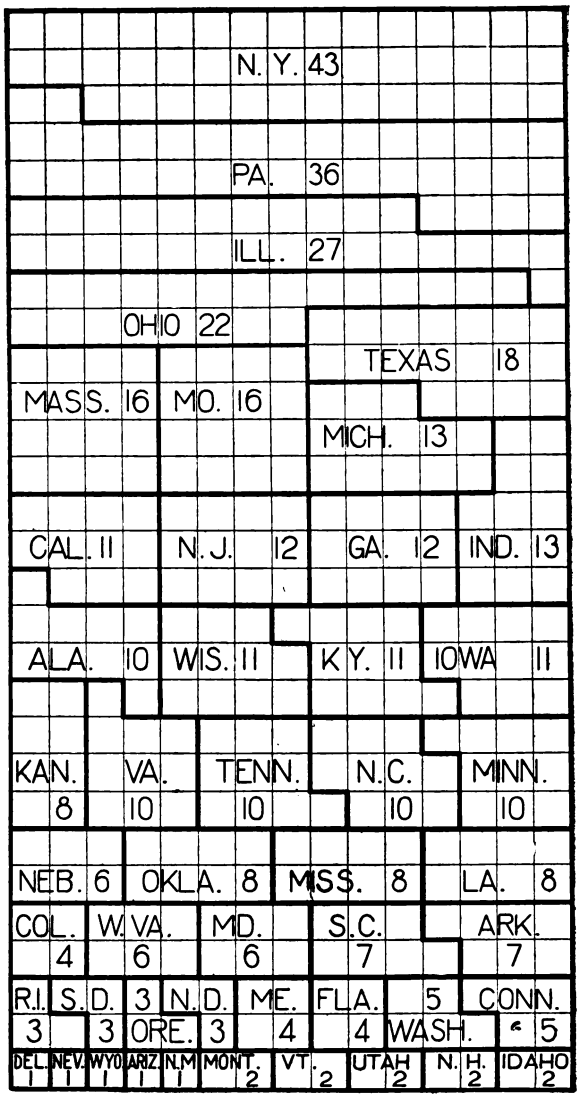
The organization of the federal government is determined by the Constitution, Article I providing for the legislature, Article II for the executive, and Article III for the judiciary. Many of the facts of federal organization are stated in the Constitution so clearly and fully as to make it unnecessary to refer to them in the text. No important facts, however, ought to be neglected by the student, and he will neglect none if, in addition to answering the questions on the text, he will also answer those questions at the end of the chapters where reference is made to the Constitution.

60. Representation in Congress. At the time when the Constitution was framed many novel theories of government were in circulation, but fortunately the men of the Convention avoided ideal schemes. As practical statesmen they knew that if their work was to be successful they must plan for a central government which should resemble as nearly as possible the government to which the people were already accustomed. Accordingly it was early determined by the Convention to take the existing State government, with its three departments, as a pattern for the federal structure. Having determined upon this, the next problem was to provide for a legislature. Since in all

the States but two (Georgia and Pennsylvania) the legislatures were bicameral, and since a bicameral legislature is a characteristic institution of English speaking peoples, the sentiment for a Congress of two houses easily carried the day (2). Then arose the question, how shall the States be represented in Congress? Should they be represented as they had been under the Confederation — one State, one vote? Should they be represented according to wealth? Should they be represented according to population? These questions gave the Convention a deal of trouble.

Some of the members wanted representation according to wealth, but the democratic spirit in the Convention was too strong for them. Virginia and several large States wanted representation according to population, while New Jersey and several small States contended that each State ought to have equal representation in Congress. Here was a struggle between the large States and the small States, or, regarded from another standpoint, a struggle between the national principle and the federal principle. The national, or large-State, party insisted that the United States *was* a nation, one homogeneous political society consisting of thirteen sections or geographical districts called States, and that each of these States ought to be represented in the federal Congress according to its population. The small-State party contended that the United States *were* thirteen different political societies, each the judge of its own political competency, each the political equal of another, and that since the new government was to be a union of equals, each State should be equally represented in the legislature. The supporters of this idea desired the new government to be strictly federal and decentralized.

The debate upon the Virginia plan and the New Jersey plan continued without the prospect of a satisfactory conclusion until Connecticut came forward with this proposition: Let each State, regardless of its population, be rep-



A Chart showing at a Glance the Relative Strength of each State in the National House of Representatives

(The vote of each member is represented by an area equal to one of the small squares)

resented in the Senate by two senators (**15**); in the House let each State be represented according to its population (**7**). The aged Franklin supported this compromise: "When a broad table is to be made," he said in his homely wisdom, "and the edges of the planks do not fit, the artist takes a little from both and makes a good joint." The Connecticut plan prevailed and a Congress was established that was partly federal and partly national.

In the Senate the federal principle prevails, but not fully, for the two senators are not required to vote together and cast a single vote, as they would be required to do under a purely federal plan. Nevertheless it is in the Senate that we must look for the federal element of our system, for there a State as a State is strong.

In the House of Representatives the national principle prevails, for representatives do not appear as representing States, but as representing people. But the House is not national in every respect, for in the event that it is required to take part in the election of a President (**84**) it votes by States, the representation of each State having one vote — a recognition of the federal principle. Moreover, a State must have at least one representative (**10**), a condition that is not required under a purely national system. Upon the whole, however, the House is national; its 433 members represent not forty-six States, but eighty millions of people.

61. The Apportionment of Representatives. When it was proposed to give to each State a number of representatives proportional to its population the question of enumeration arose: Should every human being count one? In the northern States there were but few slaves; in some of the southern States there were vast numbers of them. The northern States were unwilling to be outnumbered by having the slaves counted; the southern States wished them to be counted. This difference also ended in a compromise. It was agreed that five slaves should be counted

as three persons (8), a rule which was changed by the fourteenth amendment, which provides that in the apportionment of representatives to Congress all people except untaxed Indians should be counted (153). The number of representatives that each State was to have until a census could be taken was fixed by the Constitution (11). After the first census was taken the apportionment was to be regulated by Congress in accordance with the results of the census.

At the establishment of the government one representative was allowed for every thirty thousand inhabitants, but with the increase of population it was found necessary to increase the ratio of representation. This was done to prevent the House from becoming unwieldy by reason of numbers. If the original ratio had been retained the House of Representatives would now consist of quite 3,000 members — a body entirely too large for deliberate action. The present ratio of representation (211,877) gives a House of 433 members.

62. The Election of Representatives. Any one who is qualified to vote for members of the more numerous branch of the State legislature is qualified to vote for a representative in Congress (4). The members of the House are elected by a direct vote of the people. For more than half a century the States were allowed to elect their representatives in their own way, but in 1842 Congress, exercising its power (24), ordered that when a State was entitled to more than one representative, the representatives should be elected by districts composed of contiguous territory; that the number of these congressional districts should be equal to the number of representatives apportioned to the State; that no district should be entitled to more than one representative. The division of a State into congressional districts is left with its legislature. The districts may conform to such boundaries as the legislature

may decide upon, but they must contain as nearly as possible the same population. Sometimes the dominant party in the legislature "gerrymanders" the districts, that is, marks them out in a way that is grossly unfair to the minority party. A representative need not reside in the district which he represents, but public opinion is strongly in favor of residence within the district.

63. The Election of Senators. Members of the Senate are elected by the legislatures of the several States (**15**). For more than three-fourths of a century the legislature of each State chose United States senators in its own way; but, since disagreements were constantly arising as to the manner in which the election should be held, Congress, in 1866, in accordance with its rights (**24**), ordered that the two houses of the legislature should meet in joint assembly and elect by joint ballot; that if on the first ballot no person should receive a majority of all the votes in each house, the balloting should continue from day to day (at least one vote being taken each day), until a senator should be elected by a majority of all the votes, a majority of each house being present.

64. Congress the Focus of American Political Life. Congress, by virtue of its organization, is the political nerve-center of the Union. The members of the House come fresh and direct from the people of the whole country; the voice of the House is, therefore, the voice of the nation. The senators are the federal ties which unite the State government with the national government. In the halls of Congress have been done the things which have made the United States the country it is. As in the past Madison, Clay, Webster, Calhoun, John Quincy Adams, Sumner, Thurman, Blaine, workers in the House and Senate, shaped the policies and directed the course of the American nation, so in the present the fortunes of the Union are in the hands of the men we send to Congress. While we keep

statesmen there we are safe, but if we should allow Congress to become a body of political gamesters we would doubtless advance rapidly to national ruin.

QUESTIONS ON THE TEXT

1. What problems of representation arose in the Convention of 1787?
2. Explain the difference between the national principle of representation and the federal principle.
3. What was the Connecticut compromise?
4. In what respect is Congress a national body? In what respect is it a federal body?
5. In what manner are representatives apportioned to the several States?
6. Give an account of the election of representatives.
7. Give an account of the election of United States senators.
8. Why is Congress the center of national politics?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. Show from the history of the times that the people in 1787 needed a government which would accomplish just such objects as are mentioned in the preamble (1).
2. What words in the preamble reveal the democratic feature of our Constitution? What words its federal feature?
3. In referring to the government which has its seat at Washington, why do we sometimes speak of it as being *federal* and sometimes as being *national*?
4. Give the history of the word "gerrymandering." Is there any sign of gerrymandering in the boundaries of the congressional districts of your State? Point out the wrongs of gerrymandering. Bound the congressional district in which you live.
5. By referring to the Constitution answer the following questions, and give reasons for the constitutional provisions: How is a member of the House of Representatives elected, and what is the length of his term of office (3)? What are the qualifications of a member of the House as to age, citizenship and residence (5)? When is a person qualified to vote for representatives in the House (4)? How is a vacancy in the House of Representatives filled (12)? What are the qualifications of a senator as to age, citizenship and residence (18)? When does the Vice-President have a right to vote in the Senate (20)? Who presides at an impeachment trial when the President has been impeached (22)? If the right to membership in Congress is contested how is the question decided (26)? How is the compensation of members of Congress determined (32)? What special privileges do members of Congress enjoy (33)? What circumstances will prevent a member of Congress from receiving an appointment to office

under the federal government (**34**)? What circumstance will disqualify a man for membership in Congress (**35**)?

6. Should a member of the lower House consider the interests of his district as being of more importance than those of the nation? Should a senator place the interests of his State above those of the nation?

7. Congressmen receive twenty cents for every mile of travel to Washington and return to their homes. What is the amount of the mileage of the member of the House who represents your district?

8. *The Apportionment of Members of Congress.* The number of members appointed among the several States to serve in the 62nd Congress and to be elected in 1912 is as follows: Alabama 10, Arkansas 7, California 11, Colorado 4, Connecticut 5, Delaware 1, Florida 4, Georgia 12, Idaho 2, Illinois 27, Indiana 13, Iowa 11, Kansas 8, Kentucky 11, Louisiana 8, Maine 4, Maryland 6, Massachusetts 16, Michigan 13, Minnesota 10, Mississippi 8, Missouri 16, Montana 2, Nebraska 6, Nevada 1, New Hampshire 2, New Jersey 12, New York 43, North Carolina 10, North Dakota 3, Ohio 22, Oklahoma 8, Oregon 3, Pennsylvania 36, Rhode Island 3, South Carolina 7, South Dakota 3, Tennessee 10, Texas 18, Utah 2, Vermont 2, Virginia 10, Washington 5, West Virginia 6, Wisconsin 11, Wyoming 1, Total 433.

9. *The Oregon Plan of Electing Senators.* In Oregon voters express their choice for United States Senators at the same time that they vote for members of the legislature, and the members of the legislature, in accordance with a pledge previously made, simply vote for the senatorial candidate who has received the greatest number of votes at the polls. This plan has also been adopted by Ohio and Nebraska. It plainly takes the election of senators away from the legislature and gives it to the people. What do you think of the Oregon plan?

TOPICS FOR SPECIAL WORK

1. Popular Election of Senators. **1**: 156–161.
2. The House of Representatives. **6**: 33–70.
3. The Senate. **6**: 79–125.
4. Rights of Senators and Representatives. **14**: 182–186.

XIV

CONGRESS AT WORK

65. The Assembling of Congress and its Adjournment. Every year on the first Monday in December (**25**) Congress assembles in the Capitol at Washington, the Senate occupying the north wing of the building and the House the south wing. It convenes and adjourns by virtue of constitutional authority, and not by virtue of a summons or an order from the executive (**25**).

The President, however, may on extraordinary occasions convene Congress in an extra session (**100**), and he may also adjourn Congress if the two Houses cannot themselves agree upon a day for adjournment (**101**).

When making laws the two Houses must carry on work during the same period of time, although either House may sit alone for a period not exceeding three days (**31**).

The first Congress began its legal existence March 4, 1789, and expired at the hour of noon March 4, 1791, when the term of the first elected representatives ended; the second Congress came into power March 4, 1791, and ended its career March 4, 1793; the third Congress began March 4, 1793, and ended March 4, 1795; and thus on to the present time. From this we learn (1) that Congresses are numbered according to the biennial periods for which representatives are elected, and (2) that the legal existence of Congress begins on March 4 following the election of representatives and ends March 4 two years later. Representatives are elected in November,[1] but, unless an extra session

[1] By a special provision of the law Maine and Vermont are permitted to elect their representatives in September.

is called, they do not actually enter upon their duties until the December of the first year of their legal term — more than a year after their election. If a Congress should choose to do so, it could sit in continuous session from the time it first meets to the expiration of its term. In practice the work of a Congress is done in two regular sessions. The first session begins when a Congress assembles in December for the first time and ends late in the spring or early in the summer of the following year. This is the long session. The second or short session begins when the Congress assembles in December for the second time and ends at twelve o'clock meridian the following March 4. Extra sessions begin on a date fixed by the President and end at the pleasure of Congress.

66. The House at Work. In the first few days after the assembling of the House several thousand bills are introduced. The introduction of a bill in the House is a very easy matter; the bill is not presented in the open House but is quietly placed in a receptacle — in the "hopper" — from which it is taken by a clerk and filed. But every bill before it can become a law must be taken up in the open House and be duly discussed and disposed of in an orderly decent way. How is this done? How amid the stormy conflicts of interest which are bound to arise in the House, and in the confusion and strife which are attendant upon the proceedings of such a large body, can business be conducted in due form and order? The answer to this question involves the consideration of (1) the speakership, (2) the committee system, and (3) the rules of the House.

I. *The Speakership.* When the members of a new House assemble for the first time the clerk of the previous House calls them to order, causes a roll to be called, and, if a quorum (27) is present, invites the House to proceed with the election of a Speaker (13) who is always chosen from among the representatives. After the election of

the Speaker the other officers of the House (14) the sergeant-at-arms, the clerk and the doorkeeper are elected, and the work of the session begins.

The character of the proceedings of the House depend largely upon the firmness and fairness of the Speaker. The duties of the Speaker are defined by the rules of the House. He preserves order, he puts questions to the House to be voted upon, he decides questions of parliamentary law, and above all, he decides which member is entitled to be heard upon the floor. No member may speak or make a motion unless he has first been recognized by the Speaker.

II. *The Committees.* A large legislative body in full and open session cannot look into the merits and discuss all the items of every proposed bill. There must be a method of sifting proposed measures and rejecting worthless and absurd propositions so that the attention of the legislature may be given to serious and important matters. From time immemorial this preparation of measures has been accomplished through the agency of *committees,* small groups of members, to each of which is assigned the duty of attending to a particular branch of legislation. The more important committees of the House consist of from fifteen to twenty-one members. The principal standing committees — committees which are provided for by the rules, and which continue in existence through the entire session — are those on ways and means (p. 225), rules, appropriations, the judiciary, foreign relations, currency, commerce, pensions, military affairs, naval affairs, elections, manufactures, agriculture, public lands, and rivers and harbors. The committees are elected by the House but the membership of each committee is determined by party action before the vote in the House is taken.

The work of the House is effected through the committees. When a bill is introduced it finds its way to the appropriate committee. Friends of the bill may appear be-

fore the committee and speak in its behalf. The committee may amend the bill, or reject it outright, or pay no attention to it whatever. If a bill is rejected in committee, it has little chance of becoming a law. If it is reported favorably to the House, it has a chance at least of receiving serious consideration. A committee, besides reporting upon measures that have been referred to it, may report bills originating with itself. In practice, before a bill can become a law it must first receive the favorable judgment of a committee.

III. *The Rules.* When a bill is reported favorably by a committee it is usually placed upon the calendar along with hundreds, perhaps thousands, of other bills. By a majority vote of the entire membership of the House a bill may be taken from a committee, and placed upon the calendar without waiting for the action of the committee. This can be done, however, only after the committee has for fifteen days failed to take action upon the bill. The calendar is a kind of catalogue or register of bills, and has been called "the cemetery of legislative hopes," because so many bills are never heard of again after they reach it. When a bill has found its way to the calendar its fate henceforth rests with the rules of the House. The rules of procedure are determined by the House itself (28), and are framed with the view of conducting business in a fair and orderly manner. The general rule in reference to a bill on the calendar is that it must wait its turn for consideration, a rule which if strongly enforced might postpone action indefinitely. The real agency which can determine what bill shall be taken from the calendar and which in fact largely guides the entire proceedings of the House is the committee on rules. This committee, like the other committees, is elected by the House and consists of eleven members. The Speaker is not permitted to be a member of the committee. The committee on rules has the high privilege of bringing in a "special rule" or order, by

which a certain time may be appointed for the consideration of a bill. It can thus at any time, without discussion or delay, order any bill to be taken from the calendar for immediate consideration. This committee on rules can also determine the conditions of debate, how long members may speak, whether amendments to the bill may be offered or not, when a vote shall be taken. The first of the committees, therefore, is the committee on rules, and the first of the rules is the "special rule."

67. The Senate at Work. When a Congress expires two-thirds of the members of the Senate retain their seats in the next Congress (**16**). The Senate is thus in part a continuous body; "always changing it is forever the same." It is not reorganized at the opening of every Congress. The Constitution provides for it a permanent presiding officer (**20**); the temporary President (**21**) and other officers hold their positions for indefinite periods. The committees of the Senate are elected by the Senate itself, although before the vote is taken the membership of each committee is previously determined by party action. Senators on an average are much older than members of the House, and they exert a greater personal influence by reason of their right to be consulted in reference to the appointment of important executive officers (**96**).

The course of legislation in the Senate is smoother than it is in the House. On the floor of the Senate there is the utmost freedom of debate. Any senator may talk as long as he pleases on any subject that comes up for discussion. The Senate could adopt rules (**28**) that would curtail debate and hasten measures to a conclusion, as is done in the House, but it has not cared to do so. It proceeds upon the principle that the more fully a subject is discussed in a serious way the better, and it assumes that no senator will abuse the privilege of unlimited debate and talk merely to kill time. Senators, however, occasionally do talk to kill time. In 1890 a senator, in order to keep a

measure from coming to a vote, spoke for fourteen hours without interruption. In 1903 a senator, wishing to force the Senate to yield on a certain point, placed Lord Byron's complete works upon his desk and threatened to read every word of them if the Senate did not do what he wanted it to do. The Senate yielded because the demand was made in the closing hours of a Congress and important business was ahead.

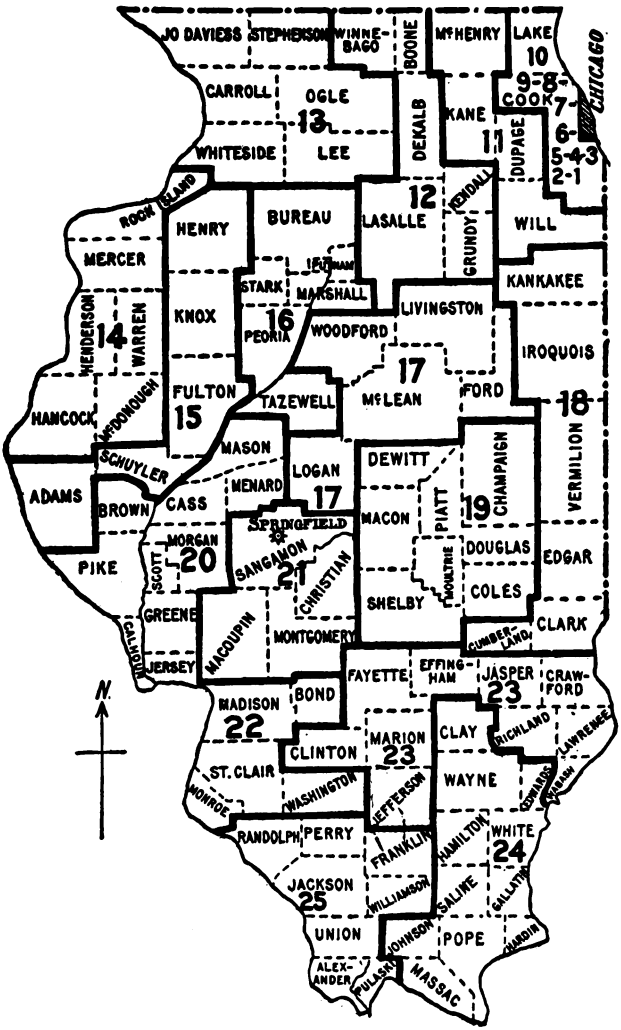
68. The Powers of Congress. The strictly legislative powers of Congress have been referred to in a general way heretofore. They are enumerated in Article I, Section 8 of the Constitution. These powers will receive particular attention at appropriate points in subsequent chapters. At present it is sufficient to notice that the powers granted by the framers to the new federal Congress are quite like the powers granted to the Congress of the old Confederation (p. 31), the most important additions being (1) the *taxing* power, which gave the new government its dignity and strength, and (2) the power to regulate *commerce,* the subject, it will be remembered, which led up to the calling of the Convention of 1787. As far as the legislative powers are concerned the House and Senate are coördinate branches: a bill passed by one house is not a law until it is passed by the other also, and either house can originate and pass such bills as it chooses, excepting that bills for raising revenue must originate in the House of Representatives (36).

Two matters not of a strictly legislative nature must receive attention here:

I. *Impeachment.* When high public officials are charged with gross misconduct in office, as when the President is charged with not enforcing a law, or a federal judge is accused of habitual drunkenness, they may be reached by the process of impeachment. Impeachment begins in the House of Representatives, where the charges against the unfaithful officer must be laid (14). If in the judg-

ment of the House the accused person is guilty, the impeachment, or accusation, is carried to the Senate to be tried (**22**). The Senate, while trying the impeachment, sits as a court of justice. Witnesses are summoned and examined and evidence *pro* and *con* is presented. If by a two-thirds vote the Senate sustains the impeachment the accused person is deprived of his office (**23**). He may afterwards be tried and punished in a court of law for his offense, but such a trial is not a part of the process of impeachment. The main object of impeachment is to protect the government from the acts of faithless officers, not to punish crime. Its purpose, therefore, is fulfilled when the offending officer is removed. Impeachment is plainly a judicial rather than a legislative function.

II. *Confirmation of Treaties and of Presidential Appointments.* A treaty (p. 211) is a law of the land (**126**). It is only right, therefore, that the legislature should participate in the treaty-making power. The Constitution recognizes this principle to the extent that treaties shall be confirmed by a two-thirds vote of the Senate (**95**). The Constitution also provides that certain presidential appointments must be confirmed by the Senate (**96**). In the exercise of this power the Senate has established a custom of confirming only those appointments which are agreeable to the senator from the State in which the appointment is made. The senator to be consulted belongs to the President's party. If the State in which the appointment is made has no senator of the President's party, the party leaders of the State must be consulted. This deference to the wishes of individual senators in the matter of confirming appointments is called *senatorial courtesy*. The application of the rule of senatorial courtesy almost doubles the power of the Senate, for it has the effect of taking federal patronage from the President and bestowing it upon senators. When confirming appointments and treaties the Senate regards itself as acting in an executive



Map of a State, showing the Congressional Districts

capacity. It holds its executive sessions behind closed doors. All purely legislative sessions, both of the House and of the Senate, are open to the public.

QUESTIONS ON THE TEXT

1. How is Congress assembled? How is it adjourned?
2. On what principle are Congresses numbered? When does the legal existence of a Congress begin? When does it terminate?
3. Give an account of the two regular sessions of Congress.
4. What are the duties of the Speaker of the House?
5. Give an account of the committee system.
6. How is it possible for the committee on rules to control the course of legislation in the House?
7. Describe the Senate in its leading characteristics. On what principle is debate in the Senate conducted?
8. Discuss in a broad way the powers of Congress.
9. Describe the process of impeachment.
10. What is the power of the Senate in reference to treaties and presidential appointments. What is meant by "senatorial courtesy"?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Answer the following questions by referring to the Constitution: How is a Speaker of the House of Representatives chosen (**13**)? When does the Vice-President have a vote in the Senate? When a President is impeached who presides at the impeachment trial in the Senate (**22**)? What constitutes a quorum in the House (**27**)? How may disorderly behavior in Congress be punished (**29**)? How may a member of Congress be expelled (**29**)? How may a yea and nay vote be secured (**30**)? Give the history of a bill after it has passed Congress (**37**). How may the veto of the President be overcome (**40**)? Under what circumstances may the President defeat a bill without vetoing it (**41**)? To what things besides bills is the approval of the President necessary (**42**)?
2. Give reasons for not allowing the Vice-President to preside at an impeachment trial when the President is accused.
3. Why is it unfortunate that so long a time should elapse between the election of Congress and its first regular session?
4. What are the advantages and disadvantages of "senatorial courtesy"? What is meant by "filibustering"?

TOPICS FOR SPECIAL WORK

1. The Rules of the House. **1**: 136–144.
2. The Powers of Congress. **15**: 268–281.
3. The Senate: Its Workings and Influence. **3**: Vol. I, 113–125.
4. The House at Work. **3**: Vol. I, 144–155.
5. A Defense of the Senate. **1**: 177–183.

XV.

THE PRESIDENCY

69. The Electoral Systems. As we have seen, a fatal weakness of the Union under the Articles of Confederation was the absence of an executive to enforce the laws. The Convention soon decided to remedy this defect by establishing a strong executive department and vesting its powers in a President (**78**). Many plans for electing the President were discussed and at last a plan of indirect election was adopted: the President was to be chosen by State colleges of electors, the electoral college of each State to have a number of electors equal to the combined number of senators and representatives to which the State was entitled in Congress (**81**). Each State was permitted to select its electors in a way agreeable to the legislature (**80**). Each of the electors was to vote for two persons (**82**) and the person who received the greatest number of votes (providing it was a majority) was to be the President, and the one who stood second in the list was to be Vice-President (**83**). If more than one person received a majority of the electoral votes the election of the President was to be made by the House (**84**).

The electoral system as first adopted was extremely clumsy and by the time the fourth presidential election was held the system had broken down almost completely and it was necessary to amend the Constitution (**146**). By Amendment XII, which was adopted in 1804, the work of the electoral college is simplified by making the election of Vice-President an affair distinct from the election of the President (**147**).

The State legislature may appoint the electors itself, it may vest their appointment in some other body, or it may call upon the people to elect them. In the early days of the Union the States differed in their methods of selecting electors. In some States they were elected by the legislature, in some they were elected by districts as representatives in Congress are at the present time, while in a few States they were elected on a common ticket. To-day every State elects its presidential electors in the same way — on a common ticket by a popular vote. Such uniformity is at first sight almost amazing. Why have all the States agreed to do this thing in the same way? Democracy and party organization must answer. We still adhere to the forms of the electoral system as provided in the twelfth amendment, but the spirit of that system has long since departed. The people long ago took the election of the President into their own hands. They have done this through the agency of political parties, and the requirements of party organization have produced uniformity in the methods of electing the presidential electors. How ninety millions of people actually accomplish this stupendous and inspiring task of selecting one of themselves as their ruler may best be told when we come to speak of party organization (p. 190).

70. The Powers and Duties of the President. The members of the Convention were distrustful of executive power and were disposed to clothe the new President with only so much authority as was absolutely necessary. Nevertheless, they probably gave him fully as much power as an executive ought to have. They made him commander-in-chief of the military forces (**92**); they gave him the power of pardoning offenses against the government of the United States (**94**); they conferred upon him jointly with the Senate the treaty-making power (**95**) and the power of appointing foreign ministers, consuls, judges of the Supreme Court and many other federal officers (**96**); they

imposed upon him the function of receiving foreign ambassadors and representatives of foreign governments (101); they gave him authority to lay before Congress at the beginning of a session a message setting forth the condition of public affairs and recommending measures for legislation (100); they gave him power to convene Congress in extraordinary session and to adjourn Congress when the two Houses cannot agree as to the matter of adjournment (101); they gave him the veto power (38).

The highest and the chief duty of the President is "to take care that the laws be faithfully executed" (102). This is a purely executive duty and one that the President cannot escape. A law may be distasteful to the President, he may regard it as hurtful or unconstitutional, yet as long as it is a law he must enforce it. "As the citizen may not elect what laws he will obey neither may the executive elect which he will enforce." Should the President wantonly refuse to execute a law he would be removable by the process of impeachment.

71. The President's Share in Law-making. While the President is bound to carry out laws that have been made whether he is in sympathy with them or not, he at the same time may do much to prevent the enactment of laws obnoxious to himself and much to secure the enactment of favorite measures. His power of prevention lies in the veto. How great this power is may be seen by a simple calculation. A bill may pass in the present House of 433 members by a vote of 217 to 216, and in the Senate by a vote of 47 to 45. Now if the President should veto the bill it would require 71 more votes in the House and 15 more in the Senate (40) to pass the measure over his veto. The legislative weight of the President, therefore, is nearly one-sixth as great as that of Congress itself.

The President's share in law-making does not end with the negative power of the veto; he possesses several legis-

lative powers of a positive nature. In making the laws known as treaties (p. 211) he takes the initiative and is coördinate with the Senate. By convening Congress in extra session he can present to that body subjects for its exclusive consideration. In annual and special messages he can give his views in respect to needed legislation, and through his influence as a party leader and as a distributor of patronage he can often cause Congress to follow the suggestions contained in his messages.

72. Succession to the Presidency. A vacancy in the office of President may occur by the death, impeachment or resignation of the incumbent, or by his inability to discharge the duties of his office. The Constitution provides a Vice-President (**88**) to succeed in the case of a vacancy. If for any reason neither President nor Vice-President can serve, an officer designated by Congress (**89**) succeeds to the Presidency. Under the presidential succession act of 1886 it is provided that members of the President's cabinet shall succeed to the Presidency in the following order: (1) The Secretary of State, (2) the Secretary of the Treasury, (3) the Secretary of War, (4) the Attorney-general, (5) the Postmaster-general, (6) the Secretary of the Navy, (7) the Secretary of the Interior. The one succeeding to the Presidency serves for the remainder of the four years, but any one thus succeeding must have the constitutional qualifications.

Thus far in our history the only officer who has been called upon to fill a vacancy in the Presidency has been a Vice-President. Five times such a succession has occurred, the vacancy each time being caused by death. The office of Vice-President is, therefore, one of great potential importance, and in selecting a Vice-President we ought to be almost as careful as we are when we select a President.

73. The President as a Political Personality. The President is the most commanding political personage in the United States. He is not only the fountain of executive

energy, he is also the representative of a great people. He reflects the ideals and aspirations and attributes of the American electorate. If the electorate should become vainglorious and selfish and low in its standards of public morality, it might place in the presidential chair a man like unto itself. To the honor of our democracy only pure and honest men have been elected to the Presidency, and to the honor of party management no low or vile man has ever been named as a presidential candidate. Voters ought to demand that this high level of personal character in presidential aspirants be maintained. The Presidency under the Constitution is attainable by any native born citizen (86), but no citizen of smirched reputation or base character should feel that it is within the range of possibility for him to become President. The saneness and goodness of democracy will be assured only so long as it refuses to ally itself with evil — evil men or evil policies.

QUESTIONS ON THE TEXT

1. What method of electing the President was adopted by the Convention of 1787?
2. What were the defects of the original method of electing the President?
3. In what ways may presidential electors be chosen? Why has the present method been adopted in all the States?
4. What are the constitutional powers and duties of the President? What is his greatest duty?
5. Give an account of the share the President has in law-making.
6. How is a successor to the Presidency provided?
7. Why should the personality of the President be above reproach?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Examine the Constitution for answers to the following questions: What is the length of the President's term of office (79)? What are his qualifications as to residence, citizenship, and age (86)? If neither President nor Vice-President can serve, how is the office of President filled (89)? Can a President have his salary increased (90)? What is the President's oath of office (91)?
2. Many people think that the President should be elected for a term of six years, and that he should be ineligible for a second term. Discuss this.

3. What are the qualifications for the office of Vice-President? What are the duties of the Vice-President?
4. Name the qualities which should be found in a President. Name the four Presidents who have been the highest embodiment of these qualities.
5. How many Presidents have been elected a second time. Have the second administrations of Presidents generally been successful?
6. Is the pardoning power a judicial or an executive function? Is the veto power a legislative or an executive function?
7. Prepare a five-minute paper on "Federal Impeachments." Woodburn, "American Republic," 231–241; Callahan, "Impeachments," in Encyclopedia Americana under article "United States."
8. What Vice-Presidents have succeeded to the Presidency? Of these how many were especially fitted for the higher position?

TOPICS FOR SPECIAL WORK

1. Defects in the Elective System. **1**: 184–191.
2. The Powers of the President. **1**: 202–210.
3. The President. **7**: 185–226.
4. Presidential Powers and Duties. **3**: Vol. I, 53–68.

XVI

THE FEDERAL EXECUTIVE DEPARTMENTS

74. The General Organization of the Executive Branch of the Federal Government. Responsibility for the smooth and efficient working of the great federal machine rests wholly on the President, but in the supervision of the executive business there must, of course, be division of labor. To assist him in governing, the President summons to his aid assistants known as secretaries. Washington began his administration with three secretaries, a Secretary of State, a Secretary of the Treasury and a Secretary of War. As the business of government increased the work of the administration was further divided and new secretaries were brought in. The chief assistants of the President now number nine and are as follows:

1. The Secretary of State.
2. The Secretary of the Treasury.
3. The Secretary of War.
4. The Attorney-general.
5. The Postmaster-general.
6. The Secretary of the Navy.
7. The Secretary of the Interior.
8. The Secretary of Agriculture.
9. The Secretary of Commerce and Labor.

Each of these secretaries is appointed by the President and is responsible to him for the management of one of the great departments of executive business.

I. *The Department of State* under the management of the *Secretary of State* attends to foreign affairs. It conducts the negotiations which lead up to the making of

treaties, instructs our foreign ministers and consuls in their duties, extends official courtesies to the ministers from other countries, gives passports to those intending to travel abroad, protects American citizens in other lands, and transacts all other business arising between our government and other governments. The Secretary of State is regarded as first in rank among the heads of the departments.

II. *The Department of the Treasury* under the *Secretary of the Treasury* manages the financial business of the country. It collects the internal revenue, and the custom duties (p. 226); it attends to the expenditure of money appropriated by Congress; it manages the public debt; it organizes and inspects national banks; it controls the mints and supervises the making of paper money. In addition to its purely financial duties this department controls the life-saving service maintained for the rescue of persons from shipwreck, supervises the construction of public buildings, and manages the marine hospitals maintained for disabled soldiers.

III. *The Department of War* under the *Secretary of War* has charge of the land forces. It purchases supplies for the soldiers, controls the transportation of troops, directs the improvements of rivers and harbors, superintends the signal service and controls the Military Academy at West Point. (For an account of the army of the United States see pp. 202–204.)

IV. *The Department of Justice* under the *Attorney-general* is the law department of the national government. When the President or a member of the cabinet desires legal advice it is furnished by this department. When the government of the United States is interested in a case in court, the Attorney-general defends or prosecutes the suit. Next in rank to the Attorney-general in the Department of Justice is the Solicitor-general who, under the direction of the Attorney-general, has charge of the busi-

ness of the government in the Supreme Court of the United States.

V. *The Post-office Department* under the *Postmaster-general,* in addition to collecting, carrying and distributing the mail, establishes and discontinues post-offices, provides the public with stamps and postal cards, also conducts a money postal-order system by which money may be safely transmitted to all parts of the world; hastens the delivery of mail by means of a special delivery system, sends by "parcels post" packages (weighing less than eleven pounds) to twenty-three designated foreign countries, and manages the business of the postal savings bank.

VI. *The Department of the Navy* under the *Secretary of the Navy* purchases naval supplies, provides for the construction and equipment of vessels, supervises the navy yards and docks, and controls the Naval Academy at Annapolis. (For an account of the United States Navy see p. 204.)

VII. *The Department of the Interior* under the *Secretary of the Interior* has charge of national affairs that are of a purely domestic nature. It examines pension claims and grants pensions, controls Indian affairs, directs the sale of public lands, issues patents, superintends such educational interests as are of a national concern, directs the work of the geological survey, superintends the construction and operation of irrigation works authorized by Congress, and investigates methods by which the safety of miners may be provided for.

VIII. *The Department of Agriculture* under the *Secretary of Agriculture* diffuses among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that term, and procures, propagates and distributes among the people new and valuable seeds and plants. This department has charge of the Weather Bureau which forecasts the weather; it conducts the inspection of animals

and meat and food products when these are subjects of interstate commerce; it studies plant life in all its relations to agriculture and gives to farmers the benefit of its investigations; it has charge of the forests belonging to the United States; it collects informations as to crops; it investigates soils and obtains information regarding insects which injure crops and plants.

IX. *The Department of Commerce and Labor* under the *Secretary of Commerce and Labor* "fosters, promotes and develops the foreign and domestic commerce, the mining, manufacturing, shipping and fishing industries, the labor interests and the transportation facilities of the United States." This department has power to investigate the affairs of any corporations engaged in interstate commerce, except commercial carriers; it gathers and publishes information in respect to industries; it diffuses information and maintains lighthouses; it takes the census (**9**); it collects statistics relating to trade; it superintends the inspecting of steam vessels; it propagates useful pond fishes; it enforces the immigration laws and the laws relating to the naturalization of aliens.

75. The Organization of a Department. Each of the nine departments has the control of a vast amount of executive business, and it is necessary to subdivide the work of a department and place an officer at the head of each subdivision. A subdivision of a department is sometimes known as a *division* of the department but more often it is known as a *bureau,* and the head of a bureau is called a director or commissioner or superintendent. For example,[1] in the department of Commerce and Labor there is a Bureau of Corporations, a Bureau of Labor, a Bureau of the Census, a Bureau of Statistics, a Bureau of Fisheries,

[1] A full account of the organization of all the nine executive departments of the federal government is found in the Congressional Directory, a work compiled for the use of the members of Congress. A copy of this book for class use may usually be secured through the courtesy of a Representative or a Senator.

A Bureau of Navigation, a Bureau of Immigration and Naturalization, a Bureau of Standards, a Bureau of Manufactures, and a Bureau of Lighthouses.

76. The Cabinet. At stated times the secretaries meet the President for consultation. This executive council is known as the *cabinet*. The cabinet as a body has no legal functions and is unknown to the Constitution, although its existence is foreshadowed in the words, "the President may require the opinion in writing of the principal officers in each of the executive departments upon any subject relating to the duties of their respective offices" (**93**). Washington, following the letter of the Constitution, communicated with his secretaries individually and required the opinion of each in writing, but his successors soon established the custom of calling the secretaries together around a council board when important matters of administration were to be settled. It is said of Jefferson: "When a question occurred of sufficient magnitude to require the opinion of all the heads of departments he called them together, had the subject discussed and a vote taken in which he counted himself as but one." From out of these early meetings of the President and his secretaries has grown the cabinet meeting of to-day. The cabinet meets at the White House at the call of the President. No records of its meetings are kept, and the public does not know what takes place at them. The President is not bound to act according to the wishes of the Cabinet, nor does he always do so. The function of the cabinet is to discuss and advise; it is for the President to decide and act.

77. Executive Work Outside the Departments. A few items of executive business have not been assigned to any one of the nine great departments. The work of the *Interstate Commerce Commission* (p. 266) is performed by seven commissioners who act independently of any department. The *Civil Service Commission,* whose duty is to

regulate and improve the civil service of the United States, consists of three commissioners who are responsible directly to the President. The *Government Printing Office,* the *Library of Congress* and the *Smithsonian Institution* are also outside of departmental control. The chief officers in all these cases of extra-departmental activity are nominated by the President and confirmed by the Senate, just as other principal officers are.

78. The National Civil Service. There are more than 400,000 persons employed in the executive civil service. Of these nearly 10,000 are appointed directly by the President. These are known as the presidential appointments. The presidential appointments are the leading officials, the heads of departments and their chief assistants, the heads of bureaus and divisions, the postmasters of large cities and towns, the chief custom house officers, the ministers to foreign countries and the like. All officers and employees who are not appointed directly by the President are appointed by the heads of the department (**98**).

Every person in this executive civil service may be regarded as receiving his position either directly or indirectly from the President. Congress creates positions, but it cannot name the persons who are to fill them. It may vest the appointment of officials and employees elsewhere than in the President (**98**), but it cannot place the appointing power beyond the President's reach. Through his secretaries and their subordinates the President's power to appoint extends to all the ramifications of the civil service.

And the presidential power to remove is even greater than is his power to appoint. His appointments to the higher offices must be agreed to by the Senate (**96**), but in the matter of removal the Senate need not be consulted. The President may remove any person employed in the federal executive service at any time for any reason or for no reason.

Of course the President cannot give special attention to

every case of appointment and removal. In these matters, as in everything else, he must be guided by the heads of the departments. He must also consult with the senators and representatives of the several States, and he must take care to allot to each State a number of appointments proportioned to its population.

In 1883 Congress provided for the competitive examination of a large class of employees in the civil service, and for appointment according to merit rather than according to party affiliation. The rule of appointment according to ascertained merit has been extended until it now reaches almost every department of the national civil service and embraces about two-thirds of all the employees. Appointees under the competitive system hold their positions during good behavior and efficient service. No employee, however, is placed beyond the President's power to remove.

QUESTIONS ON THE TEXT

1. Name the officers who form the President's cabinet.
2. Give a brief account of the work of each of the nine great federal executive departments.
3. In what manner is an executive department organized?
4. What is the organization of the Cabinet? What is its function?
5. Mention several examples of executive business which does not come under departmental control.
6. To what extent does the President possess the power of appointment? the power of removal?
7. What is the policy of the government in reference to the appointment and the retention of employees?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *Salaries of Federal Officers.* The salaries of the principal officers of the federal government are as follows:

President	$75,000
Vice-President	12,000
Members of the cabinet	12,000
Chief Justice of the Supreme Court	15,000
Associate Justices of Supreme Court	14,500

Members of Interstate Commerce Commission.....	$10,000
Judges of Circuit Courts of Appeal.....	7,000
Judges of District Courts.....	6,000
Representatives	7,500
Senators	7,500
Foreign ministers and ambassadors.....$10,000 to	17,500
Heads of bureaus and divisions..... 3,000 to	6,000

2. *The English Cabinet.* In England the cabinet consists of about a dozen members of Parliament who, besides serving as law-makers, act as the highest executive officers of the realm. The English Cabinet, therefore, is in reality a committee of Parliament, and since the Cabinet really controls the execution of the laws, we may say that the executive branch of the English government is a Committee of Parliament. The English Cabinet is composed of the members of the political party which is in power and its actions reflect the policy of that party. When a Cabinet fails to be supported by a majority of the House of Commons custom compels it either to resign or to appeal to the country by holding an election for a new House.

3. It is often proposed that the members of the cabinet be allowed to appear in Congress and urge upon that body the passage of measures which are desired by the executive. What characteristic principle of our government would such a course violate?

4. What is meant by the words: "To the victor belong the spoils"?

5. To which of the executive departments would you take a claim for pensions? a request for a passport in foreign countries? an application for a patent? an application for admission to the academy at West Point? a request for a sample of a new kind of seed? an application for a position in the life-saving service? a complaint of ill treatment in a foreign land? a request for a copyright on a book?

6. What is a bureaucracy?

7. Prepare a five-minute paper on "The organization and work of the Department of the Treasury." Consult the "congressional directory," a copy of which may possibly be obtained from your representative in Congress.

8. How could you secure a position as a stenographer in the federal service? Consult report of the Civil Service Commission, a document which may be obtained by writing for it to Washington.

TOPICS FOR SPECIAL WORK

1. The Cabinet. 1: 211–218; also 1: 227, 245.
2. Departmental Dealings with Congressional Committees. 1: 223–226.
3. Should Members of the Cabinet have Seats in Congress? 1: 226–232.
4. Civil Service Reform. 1: 232–237.
5. Recent Progress in the merit System. 1:238–242.

XVII

THE FEDERAL JUDICIARY

79. Explanation of Terms. In this chapter we shall learn of the organization and jurisdiction of the Federal Judiciary, but before we proceed it will be necessary to explain several terms which will be used.

The *jurisdiction* of a court is its power or authority to hear and determine controversies. When a court may deal with an action from its commencement it has *original* jurisdiction; when it reviews a case that has been tried in a lower court it has *appellate* jurisdiction; when a case may be tried either in one court or another the two courts are said to have *concurrent* jurisdiction; when a case is carried from a lower court to a higher one to be heard, an *appeal* is said to be taken. Cases or actions that come before courts are either criminal or civil. A *criminal* case is one in which a person is tried for crime. In a federal court a person accused of crime is guaranteed a trial by jury (139) in the State within which the crime was committed. A *civil* case, broadly speaking, is a controversy between private individuals concerning the rights of property. When a civil case is tried before a judge and jury (141) it is a case *at law;* when a civil case is tried before a judge only, it is a case *at equity.*

80. The Independence of the Federal Judiciary. Under the Articles of the Confederation disputes between States as to boundaries and cases involving charges of piracy or felony committed on the high sea could be tried by Congress, but since there was no executive to enforce the decisions the judicial power of the old government was a

mere shadow. The framers of the Constitution completed the machinery of the new government by establishing a judicial department independent of the other departments and equal to them in rank and dignity. The President appoints the federal judges (**96**), but once appointed they cannot be removed except for cause (**106**), and then only by the solemn process of impeachment. Moreover, the salary of a federal judge is secure; it may be increased, but it can never be decreased (**106**). Indeed, the conditions which surround the federal judiciary render it as independent as it is possible to make it.

81. The Three Grades of Federal Courts. The men of the Convention indicated the organization of the federal courts only in the broadest manner. They provided for the Supreme Court (**105**) and left the establishment and the gradation of the lower courts to the action of Congress. A Supreme Court there must be, just as there must be a President, but the existence of the lower courts depends upon legislation.

One of the first things done by the first Congress was to pass (1789) the Judiciary Act by which the Supreme Court and the lower federal courts were organized. The organization provided in 1789 has of course been changed from time to time to suit the changing conditions. At present the organization of the federal judiciary as promoted by an act of 1911 is as follows:

I. *The District Courts.* The lowest of the federal courts is the District Court presided over by a district judge. In every State there is at least one District Court and in the larger States there are several. Altogether there are in the United States about ninety District Courts. The District Court has original jurisdiction in nearly all those classes of cases both civil and criminal which arise under the laws of the United States. In this court are tried admiralty and maritime cases, copyright and patent cases, counterfeit cases, cases arising under the postal

laws, cases arising under the laws regulating immigration, and naturalization, cases arising under the laws regulating commerce, and other classes of cases cognizable by the authority of the United States.

II. *The Circuit Courts of Appeal.* For the trial of certain classes of cases upon appeal Congress has established nine judicial circuits [1] and has provided for each circuit a court known as the Circuit Court of Appeals. This court is composed of regular circuit judges and of judges of the other courts, three judges being necessary for the trial of a case. To the Circuit Court of Appeals are brought all appeals from the District Court except in the five following instances: (1) When the case involves a question of jurisdiction; (2) when it involves the construction of the Constitution of the United States; (3) when it involves a question of the constitutionality of a law; (4) when it involves the construction of a treaty: (5) when it involves conviction for higher crimes. These excepted cases must be taken direct from the District Court to the Supreme Court. In all other cases than these the appeal from the District Court lies to the Circuit Court of Appeals. The decisions of the Circuit Court of Appeals are made final in certain enumerated classes of cases, including copyright, patent and admiralty cases, thus relieving the Supreme Court entirely of those classes of cases. The cases not enumerated as final are still appealable to the Supreme Court.

III. *The Supreme Court,* consisting of the Chief Justice and eight associate justices. This court holds its regular

[1] The First Circuit consists of Maine, Massachusetts, New Hampshire, Rhode Island. Second — Connecticut, New York, Vermont. Third — Delaware, New Jersey, Pennsylvania. Fourth — Maryland, North Carolina, South Carolina, Virginia, West Virginia. Fifth — Alabama, Florida, Georgia, Louisiana, Mississippi, Texas. Sixth — Kentucky, Michigan, Ohio, Tennessee. Seventh — Illinois, Indiana, Wisconsin. Eighth — Arkansas, Colorado, Oklahoma, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming. Ninth — Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Hawaii.

sessions in the Capitol at Washington, sitting from October to July. The presence of at least six judges is required in the trial of a case, and the judgment of a majority is necessary in rendering a decision. The Chief Justice presides at the sessions of the court, but when the court is forming its decision he is on an equality with the other judges. He has but one vote, and that is often cast with the minority.

The Supreme Court has original jurisdiction in all cases affecting ambassadors, ministers and consuls, and in those cases in which a State is one of the parties to the controversy (110). Its appellate jurisdiction includes certain cases which are brought up to it from the Circuit Court of Appeals, and all those cases which must be brought to it direct from the District Courts. As there is no higher tribunal a decision of the Supreme Court of the United States is accepted as being the law of the land.

82. The Supreme Court and the Constitution. The Supreme Court has been called "the guardian of the Constitution." Of course the real guardian of the Constitution is the electorate, yet the Supreme Court may do much and has done much to preserve our fundamental law in its integrity. The place of the Supreme Court as a defender of the Constitution is seen in its power to declare as void and without force all acts which are repugnant to the Constitution. If a State law or a law of Congress seems to the Supreme Court to conflict with the Constitution, that tribunal, when a case arising under the law is brought before it, will declare the law unconstitutional, and its existence will be blotted out. "When a statute is adjusted to be unconstitutional it is as if it had never been. Rights cannot be brought up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made." (*Cooley.*)

When the Supreme Court declares an act of Congress unconstitutional we see the judiciary undoing the work of the legislature, and at first sight we are inclined to accuse the judiciary of assuming more power than belongs to it. But lawyers do not take this view. Courts of law, whether low or high, are established to settle disputes between litigants. They do not seek cases, but wait until cases are brought to them. The Missouri Compromise was placed on the statute books in 1820, but it was not until 1857 that it was declared unconstitutional. When a case is brought into court the judge must settle it strictly according to the law. His will, his opinion, his prejudices, his preferences, must not enter into his decision. Now there are four kinds of laws in the United States which every judge, high or low, must consider when rendering a decision, viz., (1) laws of the State legislature, (2) the State constitution, (3) the laws of Congress, and (4) the federal Constitution. The court, whether the Supreme Court of the United States or the petty town court, has these laws before it when it decides a case, and if there is a conflict between two laws the lower law must give way. If the conflict is between a law of Congress and the Constitution of the United States the former must give way because the Constitution is the supreme law of the land (**127**). So when the Supreme Court decides that a law of Congress is unconstitutional it does only what a justice of the peace might do: it selects from conflicting laws the law of greatest authority and renders a decision in accordance with this highest law. There is, however, this great difference between a justice of the peace declaring a law of Congress unconstitutional and a similar decision of the Supreme Court of the United States; there is an appeal from the decision of the justice, but there is no appeal from the decision of the Supreme Court.

In the one hundred and twenty years of its existence the Supreme Court has pronounced twenty-one acts of Con-

gress and more than two hundred State laws to be in conflict with the Constitution.

83. The Supreme Court and the People. When the Supreme Court renders a decision in a case the litigants must obey and the whole body of the American people must completely acquiesce in the decision. This does not mean, and it ought not to be regarded as meaning, that the Supreme Court has the last word on any and every constitutional question, and that its decisions shall be binding forever and forever. The last word is always with the people. The Supreme Court when expressing an opinion simply utters the will of the people as it seems to the court that will has been expressed in the Constitution. If the people are not satisfied with the judgment of the court they can so amend the Constitution as to secure precisely what they desire. When the Constitution shall have been amended, the Supreme Court must instantly recognize the amendment as the supreme law of the land and must render judgment in accordance with the letter and spirit of the amendment.

84. The Kinds of Cases Tried in the Federal Courts. The Constitution plainly enumerates the kinds of cases that may be tried in the federal courts (Article III, Section 2). The reasons for trying these cases by federal authority instead of trying them in State courts have been stated in a decision rendered by John Jay, the first Chief Justice of the Supreme Court:

(1) " The judicial power extends to all cases affecting ambassadors, other public ministers, and consuls (107), because, as these officers are of foreign nations, whom this nation is bound to protect and treat according to the laws of nations, cases affecting them ought to be cognizable only by national authority:

(2) " To all cases of admiralty and maritime jurisdiction (108), because, as the seas are joint property of nations, whose rights and privileges relative thereto are

regulated by the laws of nations and treaties, such cases necessarily belong to national jurisdiction:

(3) "To controversies to which the United States shall be a party (108); because, in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others:

(4) "To controversies between two or more States (109); because domestic tranquillity requires that the contentions of States should be peacefully terminated by a common judicatory, and because, in a free country, justice ought not to depend on the will of either of the litigants:

(5) "To controversies between a State and citizens of another State (109); because, in case a State — that is, all the citizens of it — has demands against some citizens of another State, it is better that she should prosecute their demands in a national court than in a court of the State to which those citizens belong, the danger of irritation and crimination arising from apprehensions and suspicions of partiality being thereby obviated:

(6) "To Controversies between citizens of the same State claiming (109) lands under grants of different States; because, as the rights of the two States to grant the land are drawn into question, neither of the two States ought to decide the controversy:

(7) "To controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects (109); because, as every nation is responsible for the conduct of its citizens toward other nations, all questions touching the justice due to foreign nations or people ought to be ascertained by and depend on national authority."

The fifth class of cases enumerated above requires a word of explanation. In 1793 one Chisholm of South Carolina sued the State of Georgia in the federal courts for the recovery of a claim and won his case. Here a State was dragged into a federal court by an individual from another

State. This was resented by the States and the eleventh amendment was speedily adopted (1798), and since its adoption a State cannot be sued against its will in a federal court by a citizen of another State (**145**).

QUESTIONS ON THE TEXT

1. What is meant by original jurisdiction? concurrent jurisdiction? What is a criminal case? A civil case? A case in equity?
2. How has the independence of the federal judiciary been secured?
3. Name the three grades of federal courts. Give an account of the organization and jurisdiction of each of these courts.
4. What is the effect of declaring a statute to be unconstitutional?
5. What four kinds of laws must be considered by every judge?
6. To what extent has the Supreme Court pronounced laws unconstitutional?
7. In what relation does the Supreme Court stand to the people?
8. Enumerate the kinds of cases that may be tried in the federal courts and give reasons for trying these cases by federal instead of by State authority.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Court of Commerce.* In 1910 Congress established a Court of Commerce consisting of five judges who are circuit judges in rank and who are appointed by the President. This court tries certain classes of cases which arise under the findings and orders of the Interstate Commerce Commission. Its regular sessions are held in Washington, D. C., although it may try cases in other places.

2. *Federal Courts Outside the Federal System.* Exercising federal authority, but not a part of the federal judicial system described above is the *Court of Claims*, established in 1855 for the purpose of hearing claims founded upon contracts made with the government of the United States. The judgments of this court being against a sovereign state cannot be enforced against the government as judgments are enforced against private persons. They are satisfied out of money appropriated by Congress for the purpose. The Court of Claims holds its sessions in Washington.

Other courts outside of the regular federal system are the territorial courts (p. 128), and the courts which have been established by the District of Columbia. These are not the federal courts contemplated in the Constitution; they are ordinary law courts established by Congress in pursuance of its power to govern the Territories (**119**) and the District of Columbia (**61**). Their functions correspond to those performed by the trial courts of a State (p. 152).

3. *Officers of the Federal Courts.* Every district must be supplied with a district attorney, a marshal and a clerk. The district at-

torney prosecutes and defends in the federal courts suits to which the United States is a party. The marshal is the federal sheriff (p. 161). He executes the judgments and orders of the court. The marshal is the connecting link between the judiciary and the executive. He acts under the order of the court, but in the name of the President. The clerk (appointed by the court) keeps a record of the proceedings of the court. District attorneys and marshals are appointed by the President.

4. Give an account of two famous decisions of the Supreme Court of the United States.

5. If Congress should pass a law that the people wanted and the Supreme Court should set the law aside, what remedy have the people?

6. Explain each of the following checks and balances mentioned by John Adams: [1]

(1) The House of Representatives is balanced against the Senate and the Senate against the House of Representatives.
(2) The Executive authority is balanced against the legislature.
(3) The judiciary power is balanced against the House, the Senate, the executive power and the State governments.
(4) The Senate is balanced against the President in all appointments of office and in all treaties.
(5) The people are balanced against their representatives by biennial elections.
(6) The legislature of the several States are balanced against the Senate by sextennial elections.
(7) The electors [presidential] are balanced against the people in the choice of president. (?)

TOPICS FOR SPECIAL WORK

1. The Tenure of Office in the Federal Courts. 1: 243–247.
2. The Character of the Good Judge. 1: 247–250.
3. The Power of the Courts to Declare Laws Unconstitutional. 1: 250–255.
4. The Federal Courts. 3: Vol. I, 229–241.
5. The Courts and the Constitution. 3: Vol. I, 242–261.

[1] Works Vol. VI, 407–408.

XVIII

THE TERRITORIES AND DEPENDENCIES OF THE UNITED STATES

Introduction. An account of the organization of the federal government may appropriately be followed by an account of the governments of those Territories and Dependencies which are subject to the control of the United States. This chapter therefore will treat of territorial government. In the treatment it will be convenient to speak of Territories and Dependencies, but it need not be supposed that the distinction between a Territory and a Dependency is always sharp and clear. The student, however, will do well to bear in mind that a Territory is incorporated into and forms a part of the United States, while a Dependency belongs to the United States but is not an integral part of it. Moreover, it may be broadly stated that the inhabitants of a Territory are citizens of the United States, while the inhabitants of a Dependency are not.

85. How Territories and Dependencies are Governed. All territory not included within the boundaries of a State, yet subject to the dominion of the United States, is wholly dependent upon Congress for its governmental powers (**119**). This is a fundamental principle underlying all questions relating to the government of territory subject to the sovereignty of the United States and not included within a State.

When planning for the government of federal territory from time to time, Congress has dealt with each case according to its merits. Now it has permitted a newly ac-

quired possession to enter into an immediate enjoyment of statehood; now it has provided liberally for local self-government; now it has held the reins of government tightly in its own hands. This policy of giving to each community a government suitable to its needs has led to the establishment of so many different kinds of governments in the Territories and Dependencies that a satisfactory classification of them cannot be made. Nevertheless, the inferior governments may be conveniently studied under two headings, namely: (1) Territories and Dependencies on the American Continent, and (2) Insular Territories and Dependencies.

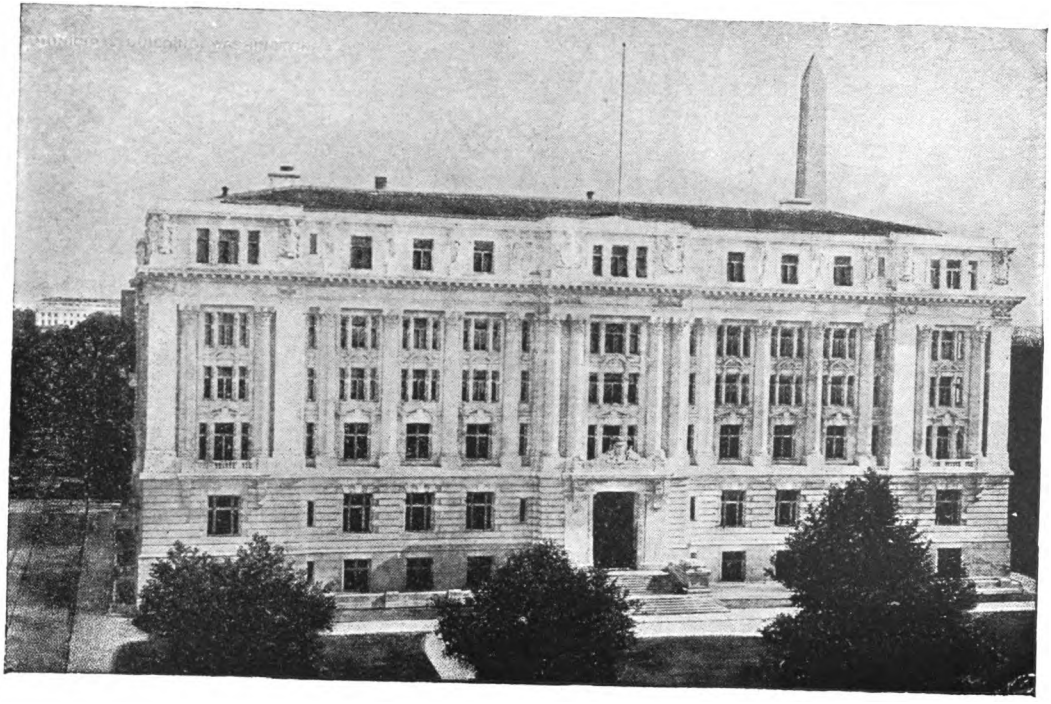
86. Territories and Dependencies on the American Continent.[1] These are: The District of Columbia, ceded to the United States by Maryland and Virginia[2] in 1790 as the permanent seat of the Federal Government; Alaska, purchased from Russia in 1866; Indian Reservations and Natural Parks:

I. *The District of Columbia.*[3] The government of the District of Columbia is, by the Constitution, vested exclusively in Congress (**61**). Several methods of governing the District had been tried when in 1878 Congress established the present form of government. The District is governed by a board of three commissioners appointed by the President. Two of the commissioners must be appointed from civil life, and one must be an officer of the army. This board exercises not only the executive power, but acts in many respects as a legislature. Its reasonable regulations in respect to matters affecting the life, health and comfort of the people have the force of laws. Although Washington — the District of Columbia is but an-

[1] For Arizona and New Mexico, see p. 134.

[2] The portion of the District granted by Virginia was afterwards retroceded to that State by the United States.

[3] Strictly speaking the District of Columbia is neither a Territory nor a Dependency; it is simply a "municipal corporation with such powers as are common to municipal corporations in general."



Municipal Building, Washington, D. C.

other name for the city of Washington — has no distinct legislature of its own, it nevertheless enjoys the services of the greatest legislative body of the country, for Congress keeps its eye upon the affairs of the District and devotes certain days to the consideration of District business. When legislating for the District, Congress acts as a city council, and visitors to the Capitol may hear senators and representatives discussing such topics of local government as the repairing of the streets or the regulation of trolley lines or the adjustment of teachers' salaries.

The judicial system of the District consists of a court of appeals, a regular trial court called the supreme court, and a police court for the trial of petty offenses and municipal regulations. Justices of the peace are provided for the trial of certain kinds of civil cases. All these judicial officers are appointed by the President.

The District of Columbia has no delegate in Congress, and no provision whatever has been made for the expression of the popular will in a law-making body. The inhabitants of the District are citizens of the United States.

II. *Alaska.* After neglecting this region for a long time Congress at last, in 1900, provided for it a code of laws and a suitable form of government. The officers of government are a governor, a surveyor-general (who also acts as secretary), a district-attorney and four judges, all appointed by the President. There is no legislative body. Provision is made in the code for local self-government in the larger towns. Alaska has a territorial Delegate in the House of Representatives. The Delegate is the political tie which binds a Territory to the federal government. He is elected every two years by popular vote. He has a right to a seat in the House of Representatives, and receives the same salary as a regular member of Congress. He serves on committees and may speak on all questions pertaining to his Territory, but he has no vote.

III. *Indian Reservations and National Parks.* In the management of the territory that has been under its control the National government has from time to time marked off and reserved certain lands for the use of the Indians. Scattered over the country there are in all about 150 of these Indian reservations. Some of them have a very large area. The Navajo reservation in Arizona has an area considerably larger than the State of Maryland. An Indian reservation is a kind of Dependency of the United States. The tribes living on a reservation are under the control of Congress. The National government protects the Indians on the reservation against injustice at the hands of the white man, gives them food supplies, and supports schools among them. The interests of the Indians on the reservations are looked after by the Bureau of Indian Affairs, one of the bureaus in the Department of the Interior.

In the management of its public domain the National government has also set off several large tracts of land to be used as parks. These national parks are in some instances of vast extent. The Yellowstone National Park has an area nearly half as great as that of Massachusetts.

87. Insular Territories and Dependencies. These are: Hawaii, annexed by a joint resolution of Congress in 1898 (July 7); Porto Rico, occupied July 25, 1898, by military forces of the United States under General Miles; the Philippine Islands, occupied August 13, 1898, by military forces under Admiral Dewey; Guam, seized by the United States navy during the war with Spain in 1898.

I. *Hawaii.* The Hawaiian Islands are governed under the name of "The Territory of Hawaii" by an act of Congress passed in 1900. This act provides that the territory shall have a properly elected legislature of two houses. The powers of the territorial legislature are similar to those of a State legislature. A law of the territorial legislature can be annulled by Congress. The executive power of the Territory is vested in a governor appointed by the

President of the United States for a term of four years. The powers and duties of the Governor correspond very closely to those of a governor of a State. Other executive officers provided for are a secretary of the Territory, an attorney-general, a treasurer, a commissioner of public works, a superintendent of public instruction, a surveyor and an auditor. These are appointed by the governor of the Territory and confirmed by the territorial senate. The judicial power of the territory is vested in a supreme court and in circuit courts. The judges of both the supreme court and of the circuit courts are appointed by the President of the United States. The legislature is empowered to provide for Hawaii a system of local government consisting of counties, towns and municipalities. Hawaii, like Alaska, has a Delegate in the House of Representatives. The inhabitants of Hawaii are citizens of the United States.

II. *Porto Rico.* The organic act establishing a government for this island was passed in April, 1900. It provides for the appointment by the President of a governor, a secretary, an attorney-general, a treasurer, an auditor, a commissioner of the interior and a commissioner of education. All these officers hold their positions for four years.

The legislature of Porto Rico is bicameral. The upper house, known as the executive council, consists of the executive officers mentioned above (not including the governor), and of five other persons, native inhabitants of Porto Rico, appointed by the President of the United States. This branch of the legislature is therefore not constituted in accordance with American ideas of representation, for it is not elected by the people. The lower branch consists of delegates elected by the voters of the island for the term of two years. The governor can veto the act of the legislature.

The judicial system of the island consists of a Supreme Court composed of judges appointed for life or good behavior by the President; of district courts presided over

by judges appointed by the governor; and of municipal courts whose judges are elected by the people.

The organic act for Porto Rico provides that the voters of the island every two years shall elect a commissioner, who shall be entitled to official recognition as such by all the departments at Washington. This commissioner in the intention of the law is plainly not a delegate, yet by the grace of the House of Representatives he has been accorded the right to speak in that body and to serve on its committees. For all practical purposes, therefore, he is in reality a territorial Delegate, although Porto Rico can hardly be said to be a Territory, for it is not a part of the United States. Its inhabitants are citizens of Porto Rico and are entitled to the protection of the United States, but they are not American citizens.

III. *The Philippine Islands.* Congress has given to the Filipinos the form of government which has seemed best suited to their needs, changing the form from time to time as conditions on the islands have changed. At present (1911) the executive department of the Philippine Islands consists of a Governor-General, a secretary of the interior, a secretary of commerce and police, a secretary of justice and finance, and a secretary of public instruction, all appointed by the President and confirmed by the Senate. The legislative department consists of a lower house elected by the people and of an upper house composed of the executive officers named above and four members appointed by the President. It will be observed that the government of the Philippine Islands closely resembles the government of Porto Rico. The Filipinos are not citizens of the United States, but they enjoy many of the rights of American citizenship.

The Philippine Islands have no delegate in Congress, yet they are permitted to send to Washington two commissioners who appear before the committees of Congress and represent the interests of the islands.

The judicial system of the Islands includes a supreme court, consisting of a chief justice and six associate justices, courts of general trial for the provinces, and justices' courts for the municipalities. The judges of the supreme court are appointed by the President of the United States, but the judges of the provincial courts and the justices of the peace are appointed by the governor of the island. Cases may be carried by appeal from the supreme court of the island to the Supreme Court of the United States.

IV. *Guam and Samoa (Tutuila).* Governmental power in these islands is vested in the naval officers who happen to be in command of the naval station. As a matter of fact the inhabitants of the islands in a large degree govern themselves. At times, however, it is necessary for the naval officer to interpose his authority, and upon such occasions his orders have the force of laws.

QUESTIONS ON THE TEXT

1. In what two respects does a Territory differ from a Dependency?
2. To what extent has Congress power over Territories and Dependencies? How has it used this power?
3. Name the Territories and Dependencies on the American Continent.
4. Describe the government of the District of Columbia; of Alaska. Give an account of our Indian reservations.
5. Name the Insular Territories and Dependencies.
6. Describe the government of Hawaii; of Porto Rico; or the Philippine Islands; of Guam and Samoa.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. Name the Territories properly so called; name the Dependencies.
2. Prepare a table showing the population and area of each of the Territories and Dependencies and give the totals.
3. Name the Territories in the order in which they are likely to be admitted as States.
4. Name the five Indian Tribes of Indian "Territory."
5. What does the Constitution say about Indians?
6. Why was the capital of the United States placed under the exclusive control of Congress?

7. Prepare a paper about the city of Washington, giving the municipal history of the city, and describing its public buildings, its monuments, and its environs.

8. What measures are usually taken by Congress for the admission of a Territory into the Union?

9. *The Panama Canal Strip.* This consists of a zone of land of the width of ten miles, extending to the distance of five miles on each side of the central line of the route of the Panama Canal. The region has been placed under the authority of the War Department, which may make such rules as are needful for the government of the zone.

10. *Arizona and New Mexico.* New Mexico was organized as a territory in 1850; Arizona was separated from New Mexico and organized as a territory in 1863. The governments of these two territories are precisely the same and each closely resembles the government provided for Hawaii.

TOPICS FOR SPECIAL WORK

1. The Territories. **3**: Vol. I, 585–595.
2. The Transmarine Possessions. **3**: Vol. II, 576–586.

For a full account of our Territories and Dependencies consult "Territories and Dependencies of the United States," by W. F. Willoughby.

XIX

THE STATE LEGISLATURE

Introductory. In this chapter and in the two chapters that follow we shall discuss the organization of the State government. Since no State is precisely like another, the organization of the government of any particular State can be learned in detail only from the constitution of that State. All a text book can do when dealing with the State government is to treat the subject in a general way.

88. General Features of a State Government. Although the States all differ from each other in their political characteristics, nevertheless, there are several political features that are common to all the States. Every State —

(1) has a republican (democratic) form of government **(120)**.

(2) has a written constitution.

(3) provides for the amendment of its constitution.

(4) has the three great departments of government.

(5) has a legislature consisting of two houses elected by the people.

(6) has an executive called the governor elected by the people.

(7) must conform strictly to the Constitution of the United States.

(8) removes high officials by the process of impeachment.

(9) supports a system of public schools.

(10) recognizes the common law of England (Louisiana excepted).

(11) Provides for a system of local self-government.

89. General Features of State Legislatures. In outward form, at least, the legislature of one State, although it may be widely separated by distance, and although it is created independently, is very much like that of another State. All legislatures meet at the State capital; the upper house is always called the Senate and is always much smaller than the lower house, which is usually called the House of Representatives; in all the States members must reside in the district which they represent; in all but six States the legislature meets every two years, and in all but eight the length of its session is limited to a term that varies from forty to ninety days; in all the States the compensation of members is the same for both houses; in all the States but one a law passed by the legislature can be vetoed by the governor, and the veto can be overcome by a majority vote or by three-fifths or a two-thirds vote of both houses; in every State each house is the judge of the qualifications and election of its own members.

90. The Passage of Bills. Upon assembling, each house of a newly elected legislature elects its presiding officer. In the lower house this officer is called the speaker; in the Senate he is called chairman or president. In some States there is a lieutenant-governor, who presides in the Senate but does not vote except when there is a tie. As soon as a clerk, a sergeant-at-arms, doorkeepers, messengers and other minor officers have been elected the presiding officer of each house announces the committees, which are as numerous as the interests and subjects that engage the attention of the legislature, the most important being those on finance, corporations, municipalities, the judiciary, appropriations, elections, education, labor, manufactures, agriculture, railroads. The committees are agencies of the utmost importance, for they are the channels through which all legislation must pass.

Any proposed law, called a bill, immediately after it is introduced and read, is referred to its proper committee.

A State Capitol

The committee considers the bill in a private room where citizens may appear to defend or oppose it, and if it thinks the bill ought not to become a law it reports it unfavorably, and thus usually kills it. It is possible to pass a bill after it has been thus unfavorably reported, but this is rarely done. The judgment of the committee is practically final. If the bill is reported favorably its title is read and it is allowed to pass upon its *second* reading. In its regular order it comes up for its *third* and last reading. Now it is read in full, amended, perhaps, and voted upon. If it fails to get a majority of the votes that is probably the last of it. If it receives a majority of the votes it is sent to the other branch to be acted upon. Here it is referred by the presiding officer to its proper committee, is read three times upon three different days, is fully discussed upon its last reading, and is then voted upon. If it passes without amendments made in this second branch it goes to the governor to be signed by him. If it passes with amendment it must be returned to the house in which it originated to be voted upon in its amended form. If it passes in the house in that form it becomes, as far as the legislature is concerned, a law. If there is trouble over the amendment a joint committee, or conference committee, consisting of several members from each house, is appointed to see what can be done to settle the matter. The action of this committee, if it reaches an agreement, is usually accepted by both houses. A bill may originate in either house, but, as a rule, bills for raising revenue must originate in the lower house, because this branch is supposed to be closer to the taxpayers.

After a bill has passed both houses it is sent to the governor for his approval. In order to guard against hasty and unwise legislation, and especially against encroachments of the legislature upon the other two departments, the governor, like the President of the United States, can (in all but one State) forbid the passage of a bill by

his veto. When he does this he sends the bill back, with his objections stated in writing, to that branch of the legislature that sent it to him. The bill may be voted upon again, and if it can secure the number of votes required by the constitution in such cases it becomes a law in spite of the governor's veto.

91. The Subjects of State Legislation. We have seen how wide is the range of power reserved to the State government (p. 43). The State legislature determines how these powers are to be exercised. The only limitations of its power are those imposed by the constitution of the State, and by the Constitution, laws and treaties of the United States (127). Within these limits it is at liberty to enact laws upon any subject that may come within the scope of governmental authority. The powers of Congress are enumerated; the powers of a State legislature are innumerable. When we say that a State legislature grants charters to cities, boroughs, towns, villages, railroads, banks, colleges, seminaries, and other institutions public and private; that it defines the boundaries of counties and towns; that it regulates taxes, licenses, fees; that it enacts punishment for treason, murder, arson, theft, kidnapping, bribery, forgery, fraud, perjury, and other crimes; that it makes laws concerning the sale of land, the giving of mortgages, the granting of deeds, the making of wills, the settlement of the estates of bankrupts, the management of the estates of the dead; concerning education, charity, health, marriage, divorce; concerning voting, and elections; concerning steamboats, canals, telegraph, and telephone companies; concerning farming, fishing, mining, manufacturing, trading,— when we say this much of the legislature, we may make it plain that its authority is very great, but we by no means exhaust the list of things it does.

92. Direct Legislation. (The Initiative and Referendum.) We have seen (p. 25) that from the beginning of our political history to the present time the people have had a

direct voice in the making of their fundamental laws, their constitutions. In recent years in a considerable number of States — and the number is constantly increasing — the people vote not only upon constitutions and constitutional amendments but upon ordinary laws as well.

This direct legislation by the people is accomplished by means of a political device known as the *initiative and referendum*. The nature of the power which the people may exert through the initiative and referendum may best be learned from a clause in the constitution of one of the States in which a system of direct legislation is in full force: "The legislative authority of this State shall be vested in a legislature consisting of a senate and a house of representatives, but the people reserve to themselves the power to propose laws and amendments to the constitution and to adopt or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act of the legislature. . . . The first power reserved to the people is the Initiative and 8 per cent. of the legal voters shall have the right to propose any measure, and 15 per cent. of the legal voters shall have the right to propose amendments to the constitution, by petition, and every such petition shall include the full text of the measure proposed. The second power is the Referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety) either by petition signed by 5 per cent. of the legal voters, or by the legislature as other bills are enacted. . . . The veto power of the governor shall not extend to measures voted upon by the people. . . . Any measure referred to the people by the initiative [or the referendum] shall take effect and be in force when it shall have been approved by a majority of votes cast in such election. . . . The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature,

in the same manner in which such power may be exercised against a complete act."

The constitutional clause just quoted shows that the device of the initiative and referendum gives life and power to the old right of petition (p. 69). If a considerable number of voters (usually from 5 to 8 per cent.) in any State desire a certain law, the initiative enables them by petition to bring the measure before the electorate to be voted upon. If a considerable number of voters are opposed to a law passed by the legislature, the referendum enables them to have the law referred to the decision of the electorate. Thus the initiative is a positive or constructive force: it enables the voters to secure what they want. The referendum is a negative or preventive force: it enables voters to veto laws which they do not want.

The general use of the initiative and referendum throughout the country would introduce a new force into American politics and would profoundly change the character of American government. What the results of a general system of direct legislation would be is of course largely a matter of conjecture. In Switzerland, where the people have had centuries of training in public affairs, direct legislation has been a success. In the United States it is probable that the initiative and referendum will succeed only in those States where the people by instinct and tradition are intensely democratic, where the popular interest in public affairs is keen, universal and sustained, and where the average of popular intelligence is very high.

While the use of the initiative and referendum in the making of State laws is important[1] its use in connection with municipal legislation is even more important. Everywhere throughout the country it is becoming the custom to give the voters of cities the right to manage municipal

[1] A system of direct legislature of some form is in operation in the following States: Oregon, South Dakota, Montana, Maine, Missouri, Oklahoma, Arkansas, Colorado, and Nevada.

affairs quite directly through the means of the initiative and referendum. This is especially true of those cities that have adopted the commission form of government (p. 181).

93. The "Recall." Closely associated with the initiative and referendum is the device known as the "recall." The aim of this device is to give the people complete control over the officers whom they have elected. Where the recall is in use the voters, upon the complaint or petition of a certain number of citizens vote upon the question whether a certain officer shall be deprived of (recalled from) his office before his term expires, and if the vote is in favor of the officer's removal he must give up his office before the end of his term. When an officer is removed by the operation of the recall, the vacancy is filled by holding a special election, at which the officer removed may be a candidate if he so desires. The recall is in operation in many of the cities governed by the commission system (p. 181) and in some cities not thus governed. In several instances mayors of large cities have been removed through the procedure of the recall. In Oregon every State official is subject to recall. The recall is a mild form of impeachment. In case of impeachment the accused officer is tried by the legislature; under the procedure of the recall the accused is tried by the whole body of voters.

QUESTIONS ON THE TEXT

1. What political features are common to all the States?
2. What features have State legislatures in common?
3. Give an account of the organization of a legislature at its opening. Give an account of the passage of a bill through the legislature.
4. What is the scope of the power of a State legislature? Upon what subjects may the legislature pass laws?
5. Describe the workings of the initiative and referendum. Upon what will the success of direct legislature depend? To what extent is the initiative and referendum in use in the United States?
6. Explain the purpose of the procedure of the "recall."

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Oregon System of Recall.* The procedure of recall in Oregon is as follows: Every public officer in Oregon is subject, as herein provided, to recall by the legal voters of the State or of the electoral district from which he is elected. There may be required 25 per cent., but not more, of the number of electors who voted in his district at the preceding election for justice of the supreme court to file their petition demanding his recall by the people. They shall set forth in said petition the reasons for said demand. If he shall offer his resignation it shall be accepted and take effect on the day it is offered, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after the petition is filed, a special election shall be ordered to be held within twenty days in his said electoral district to determine whether the people will recall said officer. On the sample ballot at said election shall be printed in not more than two hundred words the reasons for demanding the recall of said officer as set forth in the recall petition, and in not more than two hundred words the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said special election shall be officially declared. Other candidates for the office may be nominated to be voted for at said special election. The candidate who shall receive the highest number of votes shall be deemed elected for the remainder of the term, whether it be the person against whom the recall petition was filed or another.

(Answers to many questions in this chapter and also in several of the following chapters may be found in the State constitution.)

2. What is the name of the lower house of the legislature of this State? What is the name of the legislature taken as a whole? Where and how often does the legislature meet?

3. What are the qualifications of senators in this State as to age, citizenship and residence? What are the qualifications of members of the lower house? Under what circumstances is a person disqualified for membership in the legislature? What pay do the members of the legislature receive for their services?

4. What is the nature of the oath taken by a member of the legislature in this State?

5. What provision does the constitution make in respect to the number of senators? In what manner are the senators apportioned to the cities and counties? What provision is made in respect to the number of representatives? How are they apportioned to the cities and counties? Is there any question as to the fairness of this method of apportionment in this State? If the method is unjust how may a remedy be found?

6. Describe the manner in which each of the houses is called to order and organized on the first day of a session. What constitutes a quorum in each house? How may a person who is disorderly or

disrespectful in the presence of the senate or the lower house be punished? Does the legislature sit in secret or in open session?

7. In whose name are the laws of the State enacted? Describe the passage of a bill from the time it is introduced until it becomes a law. To what extent is the initiative and referendum recognized in the constitution of the State? To what extent is the recall recognized?

8. (In many States the constitution forbids the legislature to pass *special* laws in reference to certain enumerated subjects.) Name the subjects upon which the legislature of this State is not permitted to pass special laws.

9. Describe the process of impeachment in this State. How may a member of the legislature be punished for unfaithful service?

10. What is meant by "log rolling"?

TOPICS FOR SPECIAL WORK

1. Recent Tendencies in State Government. **1**: 265–271.
2. Procedure in State Legislatures. **6**: 183–195.
3. Influencing Legislative Action. **6**: 275–298.
4. The Workings of State Legislature. **3**: Vol. I, 481–497.

XX

THE STATE EXECUTIVE

94. The Distribution of Executive Functions. The administration of a State differs considerably from that of the nation. In the administration of the federal government great power is given to the President. He appoints the heads of the departments and, directly or indirectly, almost all subordinate officers. His responsibility is, of course, as great as his power. If the administration of the affairs of the United States is successful the President receives the credit; if it is ill-fated he receives the censure. It is not thus in the State. The execution of the laws of a State is not given to one person or to one body of persons, but is intrusted to various officials and various bodies. The greater part of the public business in a State is administered by local governments, by cities and townships and counties (p. 158). Those laws which pertain to special branches of State administration are distributed to State officers and State boards to be executed, and very often these officers and boards are elected by the people and are not responsible to a higher authority for their conduct. Cases of gross wrong-doing on the part of these high officials, however, may be reached by the legislature through the process of impeachment and in some cases by the recall.

95. The Executive Departments. The State officers and boards whose duties consist in managing special branches of the State's business constitute the executive department. Since this department is organized according to the particular needs of each State, we are prepared to find it dif-

fering in its details in the several States. The outlines of the executive department, nevertheless, are nearly the same in all the States. Every State has a governor (thirty-three States have a lieutenant-governor), a secretary of state and a treasurer; almost every State has a comptroller, or auditor, an attorney-general and a superintendent of education. The length of the terms of service of these officers, the manner of their election or appointment, and their qualifications and salaries are regulated by the constitution or by statute. Their duties, which do not vary widely from State to State, are as follows:

I. *The Governor.* (1) The first duty of the governor is to take care that the *laws are faithfully executed.* The governor is commander-in-chief of the military forces of the State, and he can call upon the soldiers to assist him in enforcing the judgment of a court or in suppressing riots and disorderly proceedings.

(2) Another duty of the governor is to transmit to the legislature a *message,* informing it of the condition of affairs within the State and suggesting such legislation as he may deem wise. The legislature, however, is not bound to follow the suggestions made in the message or even to consider them. If the legislature is not in session and the governor thinks certain legislation urgent, he may summon it to meet in *extra session* and lay before it the measures that demand immediate consideration.

(3) In many States the governor has the pardoning power which it is his duty to exercise when he thinks a person has been unjustly convicted of crime. His pardon may be absolute or he may *commute* the punishment. For good reason he may grant *reprieves.* In a few States the power of pardon, commutation and reprieve is not left to the governor, but is vested in a special body of officers known as the board of pardons.

(4) In every State it is the duty of the governor to appoint many officials whose selection is not otherwise pro-

vided for. When an elective official dies or resigns before his term ends the governor fills the vacancy by appointing someone to serve until another election is held. He also issues writs of election to fill vacancies when any occur in the representation of a State in the lower branch of Congress (12). When a vacancy in the representation of a State in the United States Senate occurs during the recess of the legislature, the governor makes a temporary appointment (17) to fill the vacancy until the meeting of the legislature.

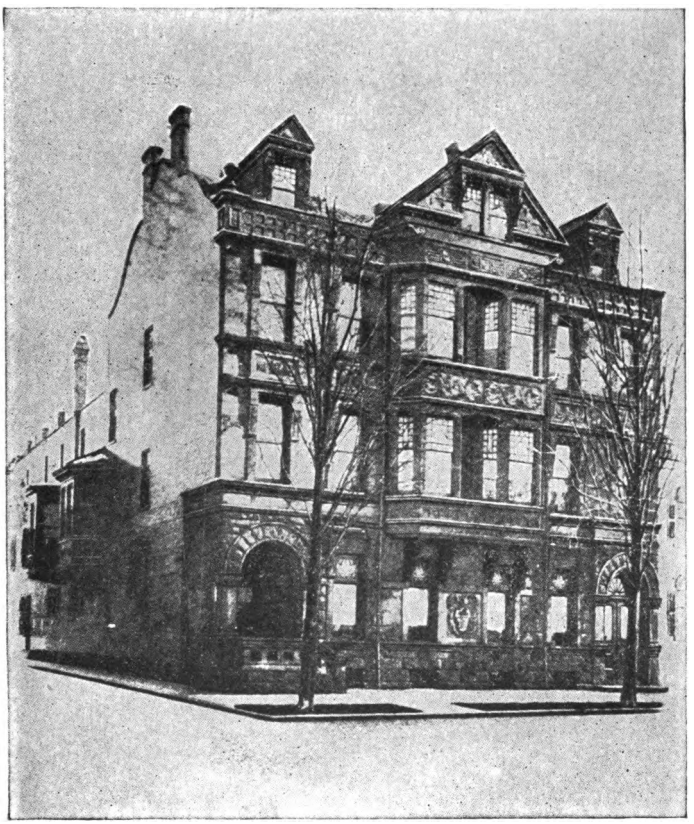
(5) It is the duty of the governor to check hasty or corrupt or unwise legislation by interposing his veto. Experience seems to prove that the possession of the veto power enables the governor to exercise a wholesome restraint upon the legislature, and accordingly the veto power is given to him in all the States but two.

(6) The governor performs numerous social duties. He opens fairs, dedicates public buildings, presents diplomas to the graduates of normal schools and colleges, and honors important celebrations and meetings with his presence.

II. *The Lieutenant-governor.* This officer serves when the governor is out of the State or is incapacitated for duty. He is *ex officio* president of the Senate, and when a vacancy occurs in the governorship he succeeds to the office. In those States where there is no lieutenant-governor the president of the Senate usually succeeds to the governorship in case of a vacancy.

III. *The secretary of State* records the official acts of the governor and files the laws passed by the legislature. He has charge of all State papers, of the journals of the legislature, and of the historical documents, statuary, paintings, relics, etc., owned by the State. This officer may properly be called the chief clerk of the executive department.

IV. *The State comptroller* or *auditor* manages the financial business of the State. He prepares plans for the im-



A Governor's Mansion

provement and management of revenue, reports estimates of the revenue and expenditure of the State, and enforces the prompt collection of taxes. He keeps an account of all the money paid into the treasury and all drawn from it. Not a dollar can be taken from the treasury without his order. As a rule it is his duty to see that those charged with the collection of revenue of the State are responsible persons and are properly bonded. In a few States the comptroller serves on one or more State boards.

V. *The State treasurer* has in his keeping the money paid into the State treasury. His principal duties are to receive the State funds, place them where they will be safe, and pay them out as he is ordered by the comptroller. Like the comptroller, the treasurer sometimes serves upon State boards.

VI. *The attorney-general* is the law officer of the State. He appears in court for the State and when any executive officer needs legal advice he may be called upon for an opinion.

VII. *The superintendent of public instruction* stands at the head of the public-school system of the State. He reports to the governor or to the legislature the condition of educational affairs throughout the State, visits teachers' institutes and other educational meetings, and delivers lectures upon educational topics, inspects schools, suggests methods of teaching and courses of instruction and promotes the cause of education in many ways. In some States he prescribes the qualifications of teachers and issues their certificates, and supervises the distribution of the school funds.

The above officers are found in almost every State. The governor and lieutenant-governor are always elected by the people, but the method of choosing the others varies; sometimes the people elect, sometimes the governor appoints and sometimes the legislature elects. In addition to these principal officers we find in the different States

such minor officers and boards as special conditions may require. The titles of these suggest the nature of their duties and may be mentioned without comment:

State insurance commissioner; State librarian; State commissioner of agriculture; State inspector of mines; State commissioner of immigration; State surveyor; State tax commissioner; State fire marshall; State factory inspector; State commissioner of fisheries; State dairy inspector; State inspector of steam boilers; adjutant-general; State vaccine physician; State board of health; State Board of education; State board of medical examiners; State board of public works; State board of dentistry; State board of railroad commissioners; State liquor license commissioners; State board of charities; State board of pardons.

No State has all of the above officers, but every State has a few of them. Besides the major and minor officials that have been mentioned there are in the service of the State such assistants, secretaries, clerks and employees of various kinds as may be necessary for the efficient working of the several departments.

QUESTIONS ON THE TEXT

1. How are the executive functions of the State government distributed?
2. Name the State officials that are found in almost every State.
3. What are the duties of the governor?
4. What are the duties of the lieutenant-governor? of the secretary of State? of the State comptroller? of the State treasurer? of the attorney-general? of the superintendent of public instruction?
5. Name some of the minor officers of the State executive department.
6. What services are rendered by the State executive department?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Which of the higher officials of this State mentioned in the text derive their authority from the constitution? From what source do the others derive their authority?
2. State the qualifications, term of office, salary and chief duties of the several State officials provided for in the constitution; also state which of these are elected by the people and which are appointed.
3. Which of the minor officials mentioned in the text are found in

this State? Why do not all the States have minor officials of the same character?

4. Has the governor of this State the veto power? If so, how may his veto be overcome?

5. Under what circumstances may the governor remove an official?

6. Is the tendency in this State to give much or little power to the governor? Is this tendency fortunate or unfortunate?

7. Name the chief executive officials of this State. In what sense are these officers representatives?

8. What are some of the qualifications of a good governor? a good comptroller? a good attorney-general? a good State superintendent of instruction?

9. Has the governor of this State the pardoning power? Is the pardoning power an executive or a judicial function?

10. In which of the three departments of the government of this State do the people take the most pride? In which do they take the least pride?

11. What officer of this State would be best fitted to serve as the President of the United States? What officers would be best fitted to serve in the President's cabinet?

12. Fill out the following scheme for the executive department of the State:

	Name?	Appointed or Elected?	Term of Office?	Salary?	Duties?
Governor					
Lieutenant-Governor					
Secretary of State					
Treasurer					
Comptroller or Auditor					
Attorney-General					
Superintendent of Education					

TOPICS FOR SPECIAL WORK

1. The State Governor. 1: 271–275.
2. Recent Tendencies in State Government. 1: 265–271.
3. Public Service Commissions. 7: 275–281.
4. The Power of Pardon. 7: 83–92.
5. The Governor's Part in Legislation. 7: 181–184.

XXI

THE STATE JUDICIARY

96. The Selection of the State Judiciary. Under England's rule each colony had its own judicial system. The judges — excepting those of Rhode Island and Connecticut — were appointed by the colonial governor. After independence was declared each State retained the system of courts to which it had been accustomed, but under the new constitutions eight States vested the election of judges in the legislature, while five gave the appointment of them to the governor. Early in the nineteenth century, Georgia, venturing upon a policy hitherto unknown in the history of politics, entrusted the election of its judges to the people. As democracy grew stronger the people began to demand the privilege of electing their judges as well as their other officers, and the example set by Georgia came to be generally followed, especially in the new States. At the present time in about three-fourths of the States the judges are chosen by the voters. In the other States they are either appointed by the governor or chosen by the legislature.

97. The Several Grades of State Courts. In the administration of justice in the State it has been found convenient in all the States to have at least three grades of courts:

I. *The Justice's Court.* This court, the lowest in the series, is held by a justice of the peace and may be called the court of the neighborhood, for in every community it is near at hand to administer justice in small affairs. In it are tried petty misdemeanors and civil cases involving small sums of money. In the trial of trivial offenses and

of civil cases involving but a small sum of money the decision of the court is usually final, but when its judgment inflicts a severe penalty or involves a considerable sum of money an appeal may be taken to a higher court. In cities, police courts, sometimes called municipal, sometimes magistrates', courts, are often established for the trial of petty criminal cases.

II. *The Circuit or District Court.*[1] This is the tribunal next above the justice's court, and it may be called the court of the county, for it is held in every county at the county-seat. It must not be understood, however, that the jurisdiction of the judges of this court is limited to a single county. A circuit (or district) usually includes several counties, and the judges of a circuit go from county to county to hold court. In rural districts this court tries both civil and criminal cases, but in the larger cities there is generally a criminal court of corresponding grade for the trial of the criminal cases. A very large city often has an elaborate system of courts of its own.

These courts of the second grade are the centers of most of the judicial activity of the State. In them are tried the weightier cases of the law. They review the cases appealed from the justice's court and they have original jurisdiction in serious criminal cases and in important civil cases.

It is in these courts, too, that the jury figures most prominently as an agency of justice. Juries are of two kinds, grand and petit. The grand jury is a body of men varying from 12 to 23 in number, chosen by court officials to inquire whether there have been any violations of the law in the community and to determine whether or not these

[1] This tribunal is called the circuit court in 19 States, the district court in 13 States, the superior court in 9 States, the court of common pleas and oyer and terminer in 2 States, the court of general sessions in one State, and the county court in one State. The student should be careful not to confuse the district court of the State with the district court of the federal system.

persons under suspicion should come up for trial.[2] When making an inquiry into a criminal charge the grand jury sits in secret and hears only the evidence against the accused. Its function is not to try the accused, but to decide whether on the face of things there is sufficient evidence of guilt to warrant a trial. When a majority of the grand jury are satisfied that the case ought to be tried the indictment is endorsed with the words "a true bill," and the case goes to the petit jury to be tried. This body (in all the States but one) must consist of twelve men. It sits in open session, hears evidence on both sides of the case. During the progress of the trial questions of law are determined by the court; the jury determines only questions of fact. After the evidence has all been given and counsel on both sides of the case have been heard, the jury retires from the court-room and is locked into a small room where it remains until it finds a verdict, or until the judge decides that no verdict will be reached. In nearly all the States it is required that all the twelve members shall agree upon the verdict. When no agreement is reached a new trial may be ordered. As a general rule it may be said that the verdict of a jury is decisive.

Juries are chosen from the ordinary citizens in the neighborhood in which the trial is conducted — from farmers, mechanics, merchants — and this is the feature doubtless that makes trial by jury so popular. When a man is tried by men who are neither too far above him nor too far below him to have sympathy with him, he has a good chance for a fair trial. The jury system, like every other human institution, has its defects, but notwithstanding its shortcomings it is one of the greatest safeguards of civil liberty ever invented.

III. *The Supreme Court.*[3] In this court resides the su-

[2] In some States an accused person can be brought to trial without the intervention of a grand jury. Where this is done the prosecuting attorney determines whether a case shall be brought to trial.

[3] In four States (Kentucky, Maryland, New Jersey and New York)

preme judicial authority of the State. It sits at the State capital,[4] where it holds sessions the greater part of the year. Its jurisdiction is for the most part appellate, although there are a few instances in which it has original jurisdiction. For example, a case involving the official action of a State officer is usually begun in the supreme court. Most of the cases, however, tried in the supreme court come up to it from the courts below. When a decision of this court conflicts in no way with the federal authority it is final, and is binding upon the people of the State as long as the State constitution remains unchanged, but when the decision conflicts with federal law or with the federal Constitution it may be reversed by the Supreme Court of the United States.

98. The Relation of the State Judiciary to the Federal Judiciary. The State courts are entirely independent of the federal courts. They have their own judges and court officers — sheriffs, clerks and prosecuting officers (p. 162) — and their own court-houses. They attend to the judicial business of the State and cannot be compelled to perform judicial duties of a federal nature. Their decisions, however, may be reviewed and reversed by the federal courts. When one of the parties to a case in a State court claims that the decision of the court is contrary to the federal Constitution or to federal law the case may be carried over to the federal courts for trial, but when a case is wholly outside of federal authority it must receive its final settlement in a State court.

99. The Powers of the State Judiciary. The part played by the State judiciary in our civil life is of the highest importance. Most of the cases that come up for settlement are tried in the State courts. The volume of State judicial business is probably ten times as great as the business of

this court is called the Court of Appeals. In Texas there are two supreme courts, one for civil and one for criminal cases.

[4] In a few States the supreme court, for the convenience of the public, holds sessions at several different places in the State.

the federal judiciary within the State. Among the powers of the State judge are the following:

(1) He may declare a statute of the legislature invalid on the ground that it conflicts (*a*) with the Constitution of the United States (127), or (*b*) with a statute or treaty of the federal government, or (*c*) with the constitution of the State.

(2) When the case before the court is novel and there is no law, either customary or written, which will fit the case the judge may nevertheless render a decision, and this decision is not only law for the case in hand, but it will also generally be regarded in other courts of the State as the law for similar cases when they shall arise. Laws thus established by judicial decisions are distinguished from those enacted by the legislature and are called judge-made laws or *case laws*.

(3) Judges in courts of equity — and in most States the regular law courts are also courts of equity — have the power to issue the *writ of injunction* forbidding a person to do, or commanding him to do, a certain thing. If the injunction is disobeyed the person disobeying it is liable to punishment. The injunction is generally used to prevent the commission of wrongs which could not be prevented by the ordinary workings of a lawsuit. Thus, if a railroad company begins to lay its tracks across a man's property without first securing a right of way, a judge in a court of equity, at any time of the day or night, will issue an injunction forbidding the railroad to continue the laying of the tracks. In recent cases courts have forbidden labor leaders and others to induce or coerce workingmen to strike where the strike would cause irreparable injury and damage to the employers. This use of the injunction has met with fierce opposition and is regarded by many as unwarranted and unjust. The power of injunction is exercised by federal as well as by State judges.

(4) In certain cases State judges may issue the writ

of *mandamus*. This writ is issued to an officer, or corporation, requiring the performance of a public duty which the officer or corporation has refused to perform. The purpose of this important writ is to compel the officer to go forward and do that which his position plainly requires him to do. Federal judges also may in certain cases issue the writ of mandamus.

QUESTIONS ON THE TEXT

1. How were judges selected in colonial times? How are they selected at the present time?
2. What is the function of the State judiciary?
3. Give an account of each of the three grades of State courts.
4. Describe the jury system.
5. In what relation does the State judiciary stand to the federal judiciary?
6. Name four important powers of the State judiciary.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *Intermediate Courts of Appeal.* In several States where the work of the courts is unusually heavy there has been inserted between the court of the second grade and the supreme court an intermediate court of appeals. This additional tribunal has been established to relieve the State supreme court of some of its burden. The jurisdiction of this intermediate court is purely appellate, and its decisions are final, except in a few specified cases which may be carried from it up to the supreme court. Pennsylvania, Illinois, Louisiana and Missouri have courts of this kind.

2. *Probate, County and Chancery Courts.* In many of the States we find in every county a probate court — sometimes called the orphans' court, p. 161. In States where there is no separate court, the probate business is given either to the regular trial court or to the county court, an institution found in many States. This county court in a few States has functions which are purely judicial and may try misdemeanors and small civil cases. In six States we find chancery courts separate from the law courts. In these chancery courts the equity cases are tried. As a rule, however, equity cases are tried in the regular law courts of the system.

3. Examine the constitution of this State for answers to the following questions: (*a*) What are the names of the several grades of courts beginning with the lowest? (*b*) How do justices of the peace and police magistrates receive their office, by election or by appointment? (*c*) What is the name of the court corresponding to the circuit court described in the text? State the qualifications of the

judges of this court, the term of their office, the mode of their election or appointment and the salary received. What is the number of the circuit (or district) in which you live? Bound this circuit and name the judges. (*d*) What is the name of the court corresponding to the supreme court described in the text? State the qualifications of the judges of this office, the term of the office, mode of election or appointment and the salary received.

4. Enumerate the qualities of a good judge and determine which of the following methods of selection will be most likely to secure the right man: (1) Election by the people; (2) appointment by the governor; (3) election by the legislature.

5. Why should the term of office of a judge be longer than that of other officers?

6. Which are the most important, good law-makers, good executive officers or good judges?

7. *The Common Law.*— When rendering their decisions judges are often guided by the rules of the *common law.* This consists of a set of rules and principles which have not been promulgated by a legislature, but which have grown out of custom and usage and have been gathered from judicial decisions and from the opinions of jurists. Constitutional laws and statutory laws are written, but the common law may be said to be unwritten, for its rules are not formulated in written documents. Most of the rules of the common law have come to us from England, but custom is making laws in America all the time, and when an American custom has hardened into a law that law is to be classified as belonging to the common law. The rules of the common law are so fundamental and so important that they are often called the "great body of the law"— the vital principles of all law.

TOPICS FOR SPECIAL WORK

1. Trial by Jury. **8**: 184–197.
2. The American Lawyer. **8**: 344–364.
3. The Election and Tenure of State Judges. **1**: 311–319.
4. Problems of Trial by Jury. **1**: 320–324.
5. The Jury in Civil Cases. **1**: 325–328.

XXII

THE COUNTY

100. The Importance of Local Government. Most of the everyday work of government rests upon the localities,—upon cities, villages, counties, townships. It requires about five times as much money to support local government as it does to support the State government. This means that the former renders about five times as much service as the latter. The federal government and the State government are far away; the local government is at one's back door and front door. The larger governments may act inefficiently or corruptly without immediate inconvenience to the citizen, but if the local government neglects the roads, and streets, or manages the schools unwisely, or wastes money, the results of its evil course are felt at once. Because it touches one at so many points, and is so near to one, local government is a subject which may rightly demand a liberal share of our attention. We have already considered local government in its broad aspects, and in respect to its relations to the higher State government. We shall now study the organization of the several kinds of local government beginning with the county.

101. The County in the South and Southwest. County government in America had its origin in the colony of Virginia. Very early the settlers of Virginia felt the necessity of some kind of local government, and they chose the English shire or county as the form most suitable to prevailing conditions.

The Virginia county was suitable to the civilization of the other southern colonies, and it was adopted by them

as a unit of local government. Later, when the southwestern regions were organized, they were divided into counties of the Virginia type. That type, of course, has changed with changed conditions, and, since the county is a creation of the State, the type varies from State to State, yet looking at the subject broadly we may say that the following States have modeled their counties on the Virginia plan: Maryland, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Arkansas, Texas, Colorado and Oregon. In these States practically all the services of local government are performed by the county, for, excepting the chartered municipalities, there is no other local government in existence. It is true that in these States the county is usually divided into minor districts, into beats or wards or election precincts, or the like, but these divisions are simply convenient areas for voting or performing some public service regulated and controlled by county authority. In the States named above the county government, and it alone, is the agency through which the people outside of municipalities manage their local affairs, and in these States local government centers around the county court-house.

102. The County of the Middle States and the West. Beginning with New York, New Jersey and Pennsylvania and passing westward, keeping north of Mason's and Dixon's line (40th parallel of latitude), in nearly all the States there have been established within the county inferior local governments known as townships. These townships perform many local services that in the South and Southwest are performed by the county. The functions of the county government in the Middle States and in the West are therefore not so numerous as they are in the South and Southwest, and the county is not so highly organized.

103. The County in New England. When we turn to New

England we find that the county is not a very important factor in the business of local government. This is because of the presence of the "town." This characteristic institution of New England, as we shall see, takes to itself nearly the whole burden of local government and leaves little for the county to do. The county in New England exists principally for judicial purposes — in Rhode Island it exists for no other purpose. Nevertheless, it has a few officers and exercises a few powers similar to those exercised by the county in other States.

104. The Organization of a Typical County Government. Although county government differs as we go from State to State there is nevertheless a certain uniformity in the organization of counties throughout the Union. The official outfit of a typical county is as follows:[1]

I. *The Board of County Commissioners or Supervisors.*[2] This is the governing body of the county. It consists usually of three or more members who serve for a term varying from one to six years. It holds its sessions at the county-seat, where all the county officials have offices. Like most of the other county officers the commissioners are elected by the people. In New York, and in several of the western States the governing body of the county — the county board of supervisors — consists not of representatives of the people, as in most States, but of representatives of the townships, a peculiarity of organization that will be noticed more fully in the chapter on townships. The county commissioners (or supervisors) usually do the following things:

(1) They fix the rate of taxation for the county.

(2) They appoint tax assessors, tax collectors, road supervisors, and other subordinate officials.

[1] In no State has the county all these officers, yet every officer mentioned in the list is a typical county official.

[2] Still called the county court in some of the Southern States; in several States it is called the levy court.

(3) They make contracts for repairing old roads and opening new ones, and also for building and repairing bridges.

(4) They make contracts for building and repairing public buildings, such as court-houses, jails and almshouses.

(5) They appropriate money for the payment of the salaries of county officers, and for all necessary expenses of county government.

(6) They represent the county when it is sued for damages. (All local governments are corporations in some respect and can be brought into court to defend a suit as if they were persons.)

II. *The Sheriff.* This officer has been called the "arm of the judge." If the judge orders a man to be taken to prison, or orders property to be sold, or sentences a man to be hanged, the sheriff executes the command. It is his duty also to preserve peace and order, and when necessary he may call to his aid *deputies.* In times of great danger or disturbance he may call to his aid the *posse comitatus,* which includes every able-bodied man in the county (p. 205). The sheriff usually lives at the county-seat and has charge of the county jail and its prisoners.

III. *The Clerk of the Circuit, or District Court.* Any court above a police court, or above that of a justice of the peace, is a "court of record"; that is, its proceedings are enrolled in permanent form. In every county there is a court of record, and the keeper of its records is the *clerk of the court,* or *prothonotary.* This officer often keeps a record of deeds and mortgages given in the county, issues marriage certificates, and records all births and deaths.

IV. *The Probate Court — the Orphans' Court.* It is the business of this court to examine the wills of deceased persons and decide whether they have been made as wills by law ought to be made. When a person dies without having made a will, and leaves no one to take charge of

his estate, the probate court will appoint an *administrator* to take charge of it. When a child is left without father or mother, the probate court will appoint a guardian, who will manage the estate until the child comes of age. In general, the business of the probate court is to see that the property of the dead falls into rightful hands. In some States the probate court is called the orphans' court. In New York it is called the surrogate's court.

V. *The Recorder,* or *Register* keeps a record of mortgages, deeds and leases.

VI. *Tax Collectors* and *Assessors* (p. 232).

VII. *The County Treasurer* pays out as well as receives all money raised by taxation.

VIII. *The Auditor.* Sometimes the county elects an *auditor,* whose duty it is to examine the books of the treasurer and other officers and report whether the public accounts are properly and honestly kept.

IX. *The Coroner.* When a person is murdered, or is found dead, or dies mysteriously, this officer takes charge of the corpse and inquires at once into the cause of the death. If he thinks there has been foul play, he summons six or twelve men to act as a jury and holds a "coroner's inquest." Witnesses are summoned, and the jury, after hearing evidence, states the probable cause of the death.

X. *The State's Attorney* is a lawyer whose duty is to give legal advice to county officers, and to appear in court at the trial of one who is charged with crime and present the side of the State. This officer is sometimes called a district attorney or prosecuting attorney; sometimes he is called the solicitor.

XI. *The Superintendent of Schools* is the executive officer of the school system of the county. He sets the examinations for teachers, visits the different schools of the county, and reports their work to the school board; he grades the work of the schools and devotes his time to improving them in every way he can.

XII. *The Surveyor* makes surveys of land when the county has need of such.

105. The Citizen and His County. Practically every American citizen is directly and closely interested in the administration of the affairs of some county, but citizens are by no means everywhere as watchful of their county government as they ought to be. County affairs are often neglected because they are regarded as too commonplace for serious attention. The citizen in his interest in the greater affairs of the State and nation overlooks the small politics of the locality. Such oversight is one of the most dangerous errors of citizenship. The county is one of the political units which go to make up the State, just as the State is one of the units of which the nation is composed. Keep the government of all the counties pure and good and good government in State and nation will almost certainly follow.

QUESTIONS ON THE TEXT

1. Why is local government so important?
2. Give an account of county government in colonial times.
3. In what States does the county perform most of the services of government?
4. How does the county of the Middle and Western States differ from the southern county?
5. Describe the New England county.
6. Name the duties of the county commissioners.
7. Name the typical county officers and name the duties of each.
8. Why is the county government of great importance?

SUGGESTIVE QUESTIONS AND EXERCISES

1. What are the provisions in the constitution of this State relating to the government of counties? Do these provisions restrict the power of the legislature in reference to counties, or do they leave that body free to govern counties pretty much as it pleases? Can the legislature of this State pass special laws as to counties?
2. How many counties in this State? Are their boundaries artificial or natural? Have their names any historical significance?
3. Bound the county in which you live and give its area and population. What is the distance of the county-seat from the most remote point in the county? In what year was this county organized?

4. Prepare a list of the county officers of this State and compare it with the list given in the text. (In those States in which the county is the predominant type of local government the two lists will probably resemble each other closely; in other States there may be a considerable difference between them.)

5. State the powers of the county board of commissioners (or supervisors) in this State. Is the board a legislative or an executive body?

6. What are the constitutional provisions relating to the term of the several county officials, the manner of their election or appointment, and their salaries?

7. Are the representatives in the legislature of this State apportioned by counties? If so, state the rule by which they are apportioned. Is the rule agreeable to the principle, "so many people, so many representatives?"

8. Is this county well governed? State particulars.

9. Of the functions of local government mentioned on p. 51 name those that are not exercised by county officials in this State.

10. What is the name of the smaller political divisions into which counties in this State are divided?

TOPICS FOR SPECIAL WORK

1. General Characteristics of County Government. **12**: 57–74.
2. The County Board. **12**: 75–94.
3. The Sheriff. **12**: 106–112.
4. County Districts in the South and West. **12**: 186–199.

XXIII

THE TOWN

(FOR PUPILS LIVING IN TOWNS)

106. The Origin and Character of the Early New England Town. At the time when the planters of Virginia were organizing newly settled communities into counties, the colonists of New England were developing a type of local government that received the name of *town*.

The early New England town was a pure democracy, in which all the male adult inhabitants who attended church — and everybody was required by law to attend church — participated in the management of public affairs. The deep religious nature of the Puritans affected their civil institutions, and for a long time their religion and politics were completely blended. Political life in Virginia centered around the county court-house; in New England it centered around the church or meeting-house, which was situated in the center of the town. A glance at the proceedings of one of the early town-meetings will illustrate how intimately civil and religious matters were mingled. Thus the people of Dorchester, Massachusetts, in town-meeting assembled, in 1666 voted that the "men's seats in the body of the meeting-house be enlarged to the women's seats, and that the space between Judge Jamison's heirs and Lieut. Stearn's pew be divided and added to their pews, they consenting, and that the doors to their pews be made to come out into the hind alley, and that men and women be placed in each of these pews by the committee for seating the meeting-house." In these days

this would seem to be strange business for government to be engaged in, but we must remember that church and state were as yet united in all parts of the world, although Rhode Island, under the leadership of Roger Williams, was making efforts about this time to separate them.

The town was chosen as an agency for local government throughout all New England, and under its stimulating and healthful influence there was developed a citizenship that has received the admiration of the world.

107. The Town-meeting. The central fact of local government in New England is the town-meeting, the old village *moot* or *tungemot* of the Teutons. Once a year all the qualified voters of the town meet together to discuss measures relating to town affairs, and to take action thereon. The meeting is no longer held in church, but in the town-house, or town-hall. When the people have assembled, the town clerk calls them to order, and states the purpose for which the meeting is called. A *moderator* is then chosen to preside over the meeting, and business proceeds according to parliamentary rules. In a town-meeting we see democracy in its purest form. Instead of sending men to conduct affairs for them, as in a representative government, the people are there in person. Young and old, rich and poor, take part in the proceedings, and any citizen present may exert the full force of his character and influence. Every measure that is brought before the meeting is discussed and criticized. Those in favor of the measure state their argument for it; those opposed to it state their objections. When the discussion is at an end a vote is taken, and whatever the results may be, all present feel that the will of the people has been expressed. Thus the town-meeting settles all matters relating to the public affairs of the town. The most important things done are these:

(1) The *rate of taxation* is fixed. Money is appropriated for the schools, for the care of the roads, for the sup-

port of the poor, for the salaries of officers, and for other necessary expenses.

(2) *By-laws* are passed for the regulation of local matters. The word *by* originally meant *town;* hence a by-law is a town law. A law passed in town-meeting forbidding the use of the sidewalks of the town for bicycling is an example of a by-law.

(3) Town *officers* are elected. It would be impossible for all the people of a town to meet together every day for the transaction of public business. For this reason, at the annual town-meeting, officers are elected to manage the affairs of the town in the name of the people for one year.

108. Town Officers:

(1) *The Selectmen.* The general management of town affairs during the year is placed in the hands of three or five or seven or nine citizens, called selectmen. These officers carry into effect the measures passed at the town-meeting. They supervise the laying out of roads; they grant licenses; they care for the poor; they take measures to abate nuisances, check the advance of contagious disease, and otherwise preserve the health of the town; they listen to complaints against the management of town affairs; they represent the town in court when it is sued; they make out the warrant when a special town-meeting is to be called. The town-meeting is the legislature of the town, and the selectmen are its chief executive officers.

(2) *The Town Clerk.* This officer has numerous duties. We have seen that it is he who calls the town-meeting to order. He must always be present at a town-meeting, and keep a record of the proceedings. In addition to this he keeps a record of the births, marriages and deaths in the town, and grants certificates to those wishing to marry. In fact, most matters of town record are in his keeping.

(3) *Assessors.*

(4) *Tax Collectors.*

(5) *A Town Treasurer.*

(6) *Overseers of the Poor.* These officers have charge of the town almshouse and give relief to the deserving poor.

(7) *The School Committee,*[1] *or Board of Education.* (p. 279).

(8) *Constables.* These are peace officers, and every town has one or more of them. They arrest for crime, and assist the selectmen in executing the law. In some towns the constable serves as tax collector.

(9) *Surveyors of Highways.* These officers inspect roads and bridges, and are responsible for keeping them in repair.

(10) *Fence Viewers.* These officers settle disputes that may arise between neighbors about partition fences or walls.

(11) *Field Drivers.* When cows or horses or other animals are found wandering about the town the field driver puts them into a pound, and keeps them until their rightful owner is found.

This list of officers is not complete; yet it is long enough to show that a great many people take part in the government of a town. It is quite possible that there are towns in which there is not one intelligent citizen of advanced years who has not at some time in his life held public office.

109. The Town as a Factor in the Civic Life in New England. It is difficult for one not residing in New England to understand how powerfully its system of local government influences its civic life. Every voter of a town is a lawmaker, and almost every one either has been, is, or very reasonably expects to be, a town officer of some kind. This direct contact with government keeps public spirit keyed up to a high pitch. If the town affairs during the

[1] In many towns a school committee manages the schools of a district, which forms only a part of the town. When this is the case school affairs are separated from town affairs.

year are managed unwisely or corruptly there is sure to be a speedy exposure in town-meeting by merciless critics. If improvements are needed, or if the town lags behind its neighbors in progressiveness, the discussions in the folk-moot are sure to be directed towards a remedy, and when a remedy is found it usually proves to be wise and effective. The keen, vigilant citizenship fostered by these little New England democracies awakened the admiration of Thomas Jefferson and led him to pronounce them to be the "wisest invention ever devised by the wit of men for the perfect exercise of self-government and for its preservation."

110. Town Government outside of New England. In those Western States which were settled largely by emigrants from New England local government is modeled to some degree on the plan of the New England town. This is especially true of Michigan, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota and Nebraska. In Michigan the voters of the townships, after electing the local officers, assemble in town-meeting and after voting the taxes for township purposes make regulations concerning such matters as the licensing of dogs, the vaccination of children, the purchase of books for the library. In certain parts of Illinois also the voters hold a town-meeting after the election of officers has been held.

QUESTIONS ON THE TEXT

1. Describe the early New England town.
2. Illustrate how the affairs of church and state were blended in the early days of New England history.
3. Describe a New England town-meeting.
4. What are the powers of a New England town?
5. Name the officers of the New England town and state their duties.
6. What influence does town government have upon civic life in New England?
7. To what extent has town government of the New England type been adopted in other States?

SUGGESTIVE QUESTIONS AND EXERCISES

(FOR STUDENTS IN NEW ENGLAND)

1. Examine the constitution of your State for provisions respecting the government of towns and state these provisions.
2. Of the services of local government mentioned on page 51, which are performed by your town government?
3. Bound the town in which you live and tell when it was organized. Name all the towns in the county in which you live. Have these names historical interest? Name the villages or boroughs or cities, if any, located within the borders of your town.
4. Make out a list of the officers of your town. Which one of these plays a most important part in town government? (Elect a committee to wait upon some town officer and invite him to give the class a talk upon town government.)
5. How may a special town meeting be called?
6. What influences are at work to make town government a less important feature of New England life than it has been in the past?
7. How many representatives has your town in the legislature? Has this apportionment been made according to the population of the town?
8. Is the town meeting a legislative or an executive body?
9. Are women and children represented in town government?
10. In what matters does the government of your town excel? In what respect is your town excelled by its neighbors?
11. How many towns in this State? What is the population of the largest town? of the smallest town? Is the largest too large for a pure democracy? Is the smallest too small for self-government?

TOPICS FOR SPECIAL WORK

1. New England Towns. **12**: 141–146.
2. The Town Meeting. **12**: 147–163.

XXIV

THE TOWNSHIP

(FOR PUPILS LIVING IN TOWNSHIPS)

111. The County-township System. We have learned that in the Middle States and in most of the States in the West the county shares the business of local government with a minor civil division known as the township. The presence of townships in the county results in a compromise system of local government often called the county-township system. Under this system the county government attends to those affairs which interest the whole body of the people of the county, while the township administers the affairs of a small area. The township, like the New England town, provides a government for a neighborhood.

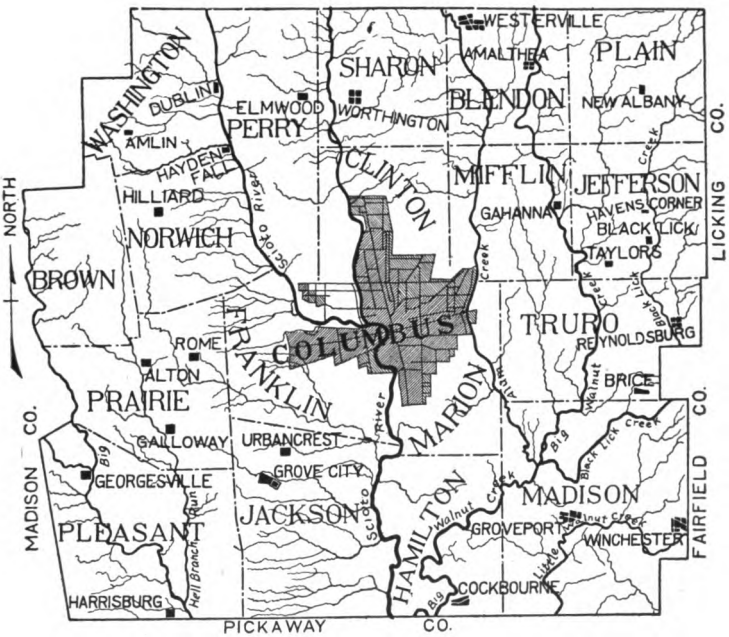
112. The Two Types of the County-township System. County-township government has had two sources, and has developed into two distinct types — the New York type and the Pennsylvania type. In New York, as in New England, small self-governing communities known as towns (townships) appeared at a very early date in the history of the colony. These towns had their town-meetings and elected a full set of officers, but their powers were at no time so great as those of the New England town. In 1703 the colonial assembly of New York passed a law that has had far-reaching influence upon local government in the United States. This law provided for the annual election by each township of an officer to be known as the *supervisor* of the township, and further provided that the supervisors of the several townships should meet at the

county-seat as a board of county supervisors (p. 160). Here was a reproduction of the old hundred-village system of early England, when the representatives of the village met in shire moot (p. 11). Following this law of 1703, there have been evolved in New York strongly democratic local governments of small area, conveniently classed as townships, and along with these a strong county government, whose chief administrative body — the board of county supervisors — consists of representatives of townships. Villages and the wards of cities are also represented on the board of county supervisors. This type of the county-township system, known as the *supervisor plan*, has served as the pattern for local government in New Jersey and those new States that were settled largely by emigrants from New York; that is to say, Michigan, Illinois and Wisconsin.

In the early days of Pennsylvania the prevailing form of local government was the county organized on the Virginia plan. Gradually the officers of the county came to be elected by the people, and when the township made its appearance the county was too strong to suffer encroachments upon its organization. It retained its board of county commissioners elected by the people of the county. Thus the townships in Pennsylvania were not allowed to conduct the business of the county through their representatives, as in New York. Moreover, the people of the townships in Pennsylvania did not hold their annual town-meetings and participate directly in the management of their local affairs, as in New York; they elected their local officers annually, and with the act of election their power was at an end. In other words, the township in Pennsylvania was a representative government.

The county-township system of Pennsylvania naturally spread to Ohio, and thence to Indiana. Later it was adopted by Iowa, Kansas, Missouri, and Oklahoma.

In Minnesota, North Dakota, South Dakota, and Ne-



Map of a County, showing Townships and Villages

braska the township system resembles the New York type in that in these States there are held annual township meetings at which much of the business of the township is transacted. In these four States, however, the township does not have a representative in the county board.

Local government in Illinois has had an instructive experience. When this State was admitted into the Union its people were largely of Southern origin and consequently, local government of the pure county type was established. As time went on, the northern part of the State filled up with people, from the North. These desired the county-township plan, and in 1848 the new constitution gave the people of the county the right to determine whether they wished townships or not. Taking advantage of this right, more than five-sixths of the counties of Illinois have decided for townships, and are now under the county-township system.

Michigan furnishes another excellent illustration of how the character and habits of the people influence the form of government. In Michigan, at first, the county-township system of the Pennsylvania kind was established, but as emigrants from New York and New England moved into the State and changed the character of the population, the people became more and more dissatisfied with their local government, and finally changed it to the supervisor or New York plan. Such experiences teach that local government must above all things be acceptable to the people who are immediately affected by it and who must personally conduct it.

113. The Powers of the Township. Why have so many States found it desirable to erect within the county another fully organized government? Because the township has been found to be an institution of great convenience. For a sparsely settled society the county is, perhaps, the only practicable form of government; but as population increases the needs of the neighborhood multiply, and many

of these needs are such as can be attended to by the people directly interested if they only have the power granted to them. It is not necessary to travel twenty miles to the county-seat to see an officer about the repair of a washout in a road, or about the purchase of a stove for a school-house, when we can have a government near at hand to attend to such things. The township has been introduced as an agency by which the needs of the immediate locality may be attended to.

Especially has the public *school* been a factor in the development of the township system. Local government in the South developed around a court-house, and in New England around a church; in the Middle States and in the West it developed around a school-house. Then, too, the care of the *roads,* and the support of the *poor* are services that may most conveniently be rendered by the government of the neighborhood.

The powers of the township vary slightly in the different States, but as a rule where the county-township system prevails the township (1) supports the public schools, (2) cares for the roads and (3) helps the poor, leaving other matters of local government to the county. The taxes necessary for doing these things are levied by township authority.

114. The Organization of the Township. The organization of township government differs greatly as we pass from State to State. In some States, as in New Jersey, Pennsylvania, Ohio, Iowa, Minnesota, and the Dakotas, there is at the head of the township government a committee or a board of supervisors or trustees consisting of several persons, the number varying from three to eleven. In New York, Michigan, Wisconsin, Illinois, Indiana, Missouri, Kansas and Oklahoma there is at the head of the township a single officer known as the supervisor, or trustee. In Wisconsin this officer is known as the town chairman. These supervisors or trustees have general charge of town-

ship affairs, although their powers and duties vary considerably as we pass from State to State.

Besides the head executive officers (or officer) there is usually a township clerk who keeps the records of the township; a township assessor; a township auditor who examines the accounts of the township; a justice of the peace; one or more constables; overseers of the poor; and election officers. In most instances township officers are elected by the people.

115. The Township a School for Good Citizenship. When we consider that in some of the States there are as many as fifteen hundred townships officered perhaps by fifteen thousand citizens we can see how great is the influence of the little local governments upon the civic life of the State. Like the New England town, the township is the training-school where citizens learn the principles of civil liberty and the art of self-government. Thus while it might be possible to dispense with the township yet to do so would be to incur a heavy political loss. There is no likelihood, however, that this valuable institution will decay. A high authority says: "The Western method of local government (the county-township system) for simplicity, symmetry, flexibility, and administrative efficiency is superior to any other system which the Teuton mind has yet produced." (*Howard.*)

QUESTIONS ON THE TEXT

1. What is meant by the county-township system?
2. Name the two types of the county-township system and describe each.
3. Name the States that have the New York type of the county-township system; the States that have the Pennsylvania type.
4. Give an account of the development of local government in Illinois; in Michigan.
5. What are the usual functions of the township?
6. Name the typical township officers and state the duties of each.
7. Describe the effect that township government has upon civic life.

SUGGESTIVE QUESTIONS AND EXERCISES

(FOR STUDENTS WHERE THE COUNTY-TOWNSHIP SYSTEM PREVAILS)

1. What is said in the constitution of this State concerning the organization and powers of townships?
2. Name the officers of this township. What are the duties of each of these officers? For what length of term does each one serve? What compensation or salary do the township officers receive?
3. Do townships of this State belong to the Pennsylvania or to the New York type?
4. What functions does the township in this State perform? Would it be wise to give it more power? Why?
5. How many townships in this county? Name them. Bound the one in which you live.
6. Are there any villages or towns within this township? If any, how are they governed?
7. May women vote for township officers in this State? May they serve as township officers? For what offices are women especially fitted?
8. Compare the merits of the supervisor plan with those of the commissioner plan.
9. Are the people of this township proud of the manner in which local affairs are conducted? If so, why? If not, why not?
10. Compute the number of township officers in this county. Estimate the number of such offices in the entire State. Describe the effect that would be produced upon the citizenship of the State if the township government were abolished.
11. Is a love of locality inconsistent with love of county?

Topic for Special Work. Townships in the Central States. **12**: 164–185.

XXV

MUNICIPALITIES

116. The Necessity for Municipal Corporations. Thus far we have described those forms of local government that are most efficient when administering to the needs of rural and sparsely settled communities. For thickly settled communities, for the thousands of villages and towns and cities which have sprung up within the boundaries of counties and towns and townships, a distinct type of local government is provided. It is plain that a large number of people living closely together, say a thousand persons upon a square mile of territory, has special needs and, therefore, should have a government with special powers. Such a densely settled community needs street-lights, sidewalks, sewers, waterworks, fire engines, and the government of the township, or county within which it is located cannot furnish these things conveniently. It also needs special officers of government clothed with special powers. As long as it is governed precisely as the thinly settled region around it, it will suffer. Its taxes will be greater than the benefits which it receives in return; its citizens will often act without regard to the public welfare or comfort; its sidewalks will be unpaved, its streets will be unlighted; offenses against the health and the peace and the good order of the community will be committed, and there will be neither law nor officers to hinder. The State, as we have seen, comes to the relief of such a community and confers upon it the privilege of a municipal corporation. Nearly one-half of the people of the United States live under some form of municipal government.

117. Villages; Boroughs; Towns. Municipal corporations, for convenience of treatment, may be divided into two classes. In the first class may be included all those chartered communities, that have a simple form of organization, limited local powers, and a small population, although population of itself is an untrustworthy guide for their classification. Such communities bear different names in different parts of the country. In Connecticut, New Jersey, and Pennsylvania they are called *boroughs*. In the Southern States they are generally called *towns*, while in the West they are usually known as villages. In Indiana, Iowa and Colorado they are called towns.

The organization and powers of a village (or town, or borough) do not differ widely in the different States. Most of the officers are elected by the voters of the village. The governing body consists of a president, or mayor, or chief burgess, and a body of three or more trustees or burgesses or commissioners. In addition to these there is always a clerk, and frequently a treasurer, tax collector, a constable, a justice of the peace and a board of street commissioners. The village government usually renders the following services:

(1) It keeps the peace.

(2) It holds a court for the trial of minor civil and criminal cases.

(3) It keeps the streets in order and provides good sidewalks.

(4) It lights the streets.

(5) It furnishes a supply of water.

(6) It supports the public schools.

(7) It cares for the public health.

(8) It purchases apparatus for the extinguishing of fires.

118. The Organization of Cities. The second class of municipalities is the *cities*. A city is almost always an enlarged town or village, and in outward appearance it is

sometimes difficult to distinguish a small city from a large town, although between the governments of the two there is a sharp difference. The government of the city is more complex than that of the town, its powers are greater, its officers are more numerous, and its local independence is more clearly defined. At what point in its growth a town or village shall cast off its simple organization and assume the dignity of cityhood depends upon State law. In many States a place must have ten thousand or more inhabitants before it is entitled to the privileges of a city, while in other States we find cities with less than three thousand inhabitants.

Since cities are controlled by the State legislature there are not only great differences in their organization in different parts of the Union, but even in the same State it is sometimes impossible to find two cities with the same form of government. Still, there are two well defined types of city government in the United States, the *council* system and the *commission* system.

I. *The Council System.* In most American cities the municipal power is divided and given to a city council and a mayor, the council exercising the legislative power, and the mayor exercising the executive power. This organization is usually known as the council system.

The organization of the city council varies with the temper of State legislatures and with the theories of municipal formers. It is always a representative body and its members are usually elected from municipal divisions known as *wards.* In some cities the council consists of two branches; in others it consists of a single body. The term of office of a councilman is sometimes as short as one year but it is never longer than four years. The council as the legislature of the city regulates the almost innumerable activities of the city government. A perusal of its proceedings as reported in the daily newspaper will show how closely its actions are connected with the daily life of

the urban resident. Its laws, called *ordinances,* affect profoundly the health, safety, peace, comfort, prosperity, intelligence and morality of the city.

In cities where the council system prevails the executive power is vested in a mayor who is elected by the voters for a term varying from one to four years. The powers and duties of the mayor within the city are comparable to those of the governor within the State. The chief duty of the mayor is to carry into effect the laws affecting the municipality. Associated with the mayor in the executive branch of a large city, there are numerous heads of departments and boards. Some of these are elected by the people, others are appointed by the mayor; in a few States some of them (for example, the police and health commissioners) are appointed by the governor, or by the State legislature. Serving under these chiefs and boards are assistants and employees, the number of whom increases with the size of the city, and sometimes consists of many thousands. A well organized city will usually have such departments and officers and boards as are indicated by the following outline:

(1) Department of Finance: comptroller, board of estimates, collector of taxes.

(2) Department of law: city solicitor, or attorney.

(3) Department of Public Safety: board of fire commissioners, commissioner of health, inspector of buildings, commissioner of streets.

(4) Department of Public Improvement: city engineer, water board, inspector of boilers.

(5) Department of Parks and Squares: board of park commissioners.

(6) Department of Education: board of school commissioners.

(7) Department of Charities and Correction: trustees of the poor, supervisors of city charities.

(8) Department of Taxes and Assessment: court of taxes and assessment.

(9) Board of Police Commissioners.

(10) Miscellaneous: city librarian, superintendent of lamps and lighting, surveyor, constables, superintendent of public buildings, public printer.

In every large city there is a system of courts extending from the police or magistrate court up to the higher courts, but the judges of these courts, although they may be elected by the people of the city, are not strictly officers of the municipal government. Justice is administered in the name of the State, and the judicial department of a city is merely a portion of the State judiciary acting within the borders of the city. Appeals from courts of the city are taken to the supreme court of the State.

II. *The Commission System.* In many of our cities the municipal power both legislative and executive is vested in a single body, usually known as a commission, although this body is sometimes called the city council. This system of municipal organization originated in Galveston after the great inundation of 1900. The success of Galveston with the commission system led to its adoption in other cities. At the present time nearly 150 cities are governed by the commission plan. Under the commission system the governing body usually consists of five commissioners (or councilmen) elected by the voters of the city at large, there being no ward lines recognized in the selection or in the election of this commission. Party lines as well as ward lines are disregarded in the election of the commission, for candidates are nominated without the aid of party machinery and the election is conducted without regard to partisan results. One member of the commission is the mayor who presides at the meetings of the commission (council) but who has no power to veto any measure. The commission passes the ordinances for the government and adminis-

tration of the city and also carries the ordinances into effect. The executive and administrative authority and duties are distributed among several departments. These departments are usually five in number and are known as (1) the department of public affairs, (2) the department of accounts and finances, (3) the department of public safety, (4) the department of streets and public improvements, and (5) the department of parks and public property. At the head of each of these departments is placed one of the members of the commission, who is the superintendent of his department and who is responsible for its workings. The mayor, by virtue of his office is the superintendent of the department of public affairs. The superintendents of the other four departments are designated by a majority vote of the commission itself. All city offices such as the city clerk, the solicitor, the assessor, the treasurer, the auditor, the chief of the fire department and the like, are appointed by the commission.

Thus it is seen that under the commission plan very great power is lodged in a small body of men. But the commission (council) is not likely often to abuse its power for wherever the commission system has been installed the people have usually reserved for themselves the powers residing in the initiative and referendum, and in the recall (p. 139). Where these devices are in operation the commission is held directly responsible and accountable to the electorate.

119. The Sphere of Municipal Activity. In the early days of our history the powers granted by a charter were such as were necessary to satisfy special local needs and these referred chiefly to the preservation of law and order. As the cities grew larger it became necessary for municipal government to render additional services. When it was learned that as an agency for the suppression of crime one street lamp was worth two policemen, cities generally

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undertook the business of street lighting, and when it was discovered that an engine for the extinguishment of fire was worth many times its cost, they began to purchase fire engines and other apparatus for the volunteer fire department.

During the last fifty years the percentage of our urban population has grown with astonishing rapidity, and with the increase in the number and size of cities municipal government has become more and more complex, and the range of municipal activity has widened. It would be difficult to enumerate all the things done by a progressive municipality of to-day. The city government furnishes police protection, supports fire brigades, provides a water supply, lights the streets with gas or electricity, and paves and cleans them, constructs sewers, helps the poor and unfortunate, maintains a system of elementary and high schools, preserves the public health, abates nuisances, inspects food, removes garbage, supports parks, libraries, hospitals, cemeteries, fosters music and literature and art, provides and equips playgrounds for children, and does a score of other things that would have amazed our forefathers.

QUESTIONS ON THE TEXT

1. Under what circumstances does government under a municipal incorporation become necessary?
2. Into what two classes may municipal incorporations be divided?
3. Describe the organization of the village or borough. What are the services of municipalities of this class?
4. What is the difference between a village and a city?
5. Into what two classes may cities be divided?
6. Describe the council system of city government.
7. Name the usual municipal executive departments.
8. What is the relation of the city courts to the municipality?
9. Describe the "Commission" System.
10. What are some of the things done by the modern municipality?

SUGGESTIVE QUESTIONS AND EXERCISES

I

(FOR STUDENTS IN THE SMALLER MUNICIPALITIES)

1. Secure, if possible, a copy of your municipal charter and learn the boundaries, the titles of the officers, and the powers of your municipality.
2. Secure the names of the officers who are now serving in the offices of your town. Which of these are serving without pay?
3. What can you say of the condition of the streets of your town? of the efficiency of your fire department? of the efficiency of your police department? of the success of your school system?
4. Look around you and discover something that you as pupils may do to improve your town. (Let each student mention *one* thing.)
5. You have discovered a few things which you as students may do for the betterment of town affairs. Now organize as a civic club and set about doing these things.
6. Would you vote for a town officer regardless of the political party to which he belongs? Give reasons for your answer.
7. Name all the chartered municipalities situated in the county in which you live.
8. To what extent is your town under county government?

II

(FOR STUDENTS LIVING IN CITIES)

1. Is your city organized under the council system or under the commission system? Does your State permit a city to organize under the commission system? If so, what cities have installed this system?
2. What is the length of the mayor's term of office? What is his salary? What officers and boards does he appoint?
3. Describe the organization of your city council. What is the method of representation in this council? Do you know the name of the person who represents your ward in the council? Bound the ward in which you live.
4. (See exercise 5 above, substituting "city" for "town.")
5. (See suggestion 6 above.)
6. A citizen of a city said: "I always vote at State and national elections, but I never vote at municipal elections." In what particular was this citizen neglecting his personal interest? What special qualities of citizenship are necessary in a city?
7. Make out a list of the services performed by the national, State and municipal governments respectively.
8. Name a few of the influences that make for bad city government. Can any of these be overcome?
9. What agencies are now at work in your city for the improvement of its government?

10. What does the constitution of the State say in respect to municipal government?

11. *The Growth of the Commission System.*— Among the cities which have the commission system are Dallas, Fort Worth, Beaumont, Dennison, and Austin, in Texas; Des Moines, Davenport, Cedar Rapids, Keokuk, Burlington, Fort Dodge, and Marshalltown, in Iowa; Leavenworth, Independence, Newton, Wichita, Hutchinson, Wellington, Kansas City, Emporia, Coffeyville, in Kansas; Decatur, Springfield, Rock Island, Elgin, Carbondale and Clinton, in Illinois; Haverhill, Gloucester, and Taunton, in Massachusetts; Berkeley, Oakland, Vallejo, Modesto, and San Diego, in California; Sioux Falls, Pierre, Chamberlain, Aberdeen, and Canton, in South Dakota; Ardmore, McAlester, Muscogee, Duncan, Oklahoma City, and Bartlesville, in Oklahoma; Mandan, Minot, and Bismarck, in North Dakota; Memphis, in Tennessee; Colorado Springs and Grand Junction, in Colorado; Huntington, Bluefields and Petersburg, in West Virginia; Fort Huron, Pontiac, Wyandotte, in Michigan; Tacoma and Spokane, in Washington; Omaha, in Nebraska; Trenton and Passaic, in New Jersey.

TOPICS FOR SPECIAL WORK

1. The Des Moines Plan of City Government. **1**: 356–360.
2. The City Council. **11**: 137–176.
3. The City Beautiful. **13**: 239–248.
4. The City for the People. **13**: 280–299.
5. Popular Responsibility. **16**: 244–274.
6. Civic Education. **16**: 91–120.

XXVI

PARTY ORGANIZATION

120. The Nomination of Candidates. One of the most important of the services performed by a political party is to nominate candidates for office. A person may announce himself as a candidate and secure votes for himself without being named as the candidate of a party, but it seldom happens that any one is elected to an important office in this way. Before one can hope for success at the polls one must first receive the endorsement of a political party. A nomination by a party is an announcement to voters from a responsible source that the candidate named possesses personal fitness for the office to which he aspires, and that his political views agree with the doctrines professed by the party. In a great democracy intelligent voting is almost impossible unless candidates are agreed upon before election day and to secure such an agreement requires the services of a well organized party.

121. Permanent Party Organization. The study of a great political party may properly begin with the permanent party organization. The work of a political party does not end on election night when the ballots have been counted. The life of a party must be supported from one election to the next, and this is done by means of a *permanent organization,* which is maintained throughout the length and breadth of the land. In almost every township, village, election district, and city ward, each of the great parties has its permanent local committee of management. Likewise it has its permanent county, city and State committees. Above all these it has a permanent

National Committee, consisting of one member from each of the States and Territories.

These permanent committees do the heavy work of politics. Indeed, they do *all* the work of politics except the voting. They issue calls for the nominating conventions to be described below; they organize political clubs; they arrange for political mass meetings and processions; they solicit funds for conducting campaigns; they urge voters to be registered, and then urge them to come to the polls; in many other ways they promote and defend the interests of the party, through good and ill report, after defeat as well as after success.

The members of these party committees are generally experienced politicians, and they know how to organize and control men. They are skillful in determining what the rank and file of the party desire, and they are quick to respond to the commands of public opinion. Their services are generally performed without compensation. In many instances, however, in the event of party success, they expect either to hold office themselves or to assist their friends to office, or to profit personally in some other way.

122. Party Conventions. The chief work of the permanent committees is to keep the nominating machinery in motion. This consists of a series of party conventions which in a presidential year are all called into action. Party organization in the United States was built up while men were finding a way to nominate a candidate for the presidency, and the presidential nomination is still the central subject of party activity.

I. *The Primary (or Caucus).* In the spring of a presidential year the permanent local committees of the lowest grade, in response to an order which has come down to them through the State Committee from the National Committee, call together the voters of the party within the town or election precinct or ward to confer and act upon party matters — especially upon matters relating to the nomina-

tion of a candidate for President — in a *primary* meeting. At the primary — sometimes called a *caucus* — two things at least are likely to be done: (1) the permanent local committee is either reëlected, or a new one is chosen, and (2) delegates to a county (or city) convention are elected.

These primary meetings are quite in the nature of pure democracies. Sometimes they are held in a hall and are so conducted that any voter, in addition to voting, may express his opinion in discussion. They are the meetings where the voting masses of the party have a direct voice in the management of the party's affairs. They can be controlled by the voters of the party, and if they are controlled by the party managers (the permanent committee) it is the fault of the voters.

After the people have expressed themselves at the primaries they have nothing further to do with party management. Everything henceforth is in the hands of the delegates and managers chosen in the primaries. It is only natural that the permanent organization should seek to control the primaries, for if they can do this they can name the delegates to the higher conventions, and thus control the nominations for all the higher offices, and can secure for themselves and friends appointments to office. If the voters of a party do not like the nominations which are made they can, of course, vote against the candidates at the polls, but voters are loath to do this. It seems to be much easier to neglect one's duties at the primaries than it is to rebuke the party management on election day.

In many of the States primaries are placed under the strict control of the law and are conducted as regularly and as honestly as other elections (p. 272) are conducted. These primary election laws are of the greatest importance and they should receive the heartiest support, for the primaries are the springs in which the great stream of politics rises, and that stream will be pure or impure according as the source is pure or impure.

II. *The County (or City) Convention.* We left the primary sending delegates to the county convention in a presidential year. These delegates may be *instructed* at the primary to act in the interest of a certain man as the party candidate for President, and to support certain political measures, or they may go to the convention free to act as their judgments direct. In a short time after the primary election they assemble (usually at the county-seat) as the *county convention* of the party which they represent. This body, consisting perhaps of forty or fifty men, elects three or four or five delegates to represent the party in a State convention. If the county convention is in favor of a certain man for President it may instruct these delegates for this man in the State convention.

III. *The State Convention.* A few weeks after the county convention, delegates from all the counties (and cities[1]) assemble at some convenient place as the State convention of the party. This body, consisting sometimes of several hundred men, passes resolutions expressing the political views of the party in the State, names its choice for presidential candidate — if it happens to have a choice — and elects delegates to a National Convention, the number of delegates allotted to each State being twice the number of its representatives in both Houses of Congress.[2] Sometimes it also selects candidates for presidential electors. Although the men in this convention are several degrees removed from the voting mass, yet if the sentiment at the primaries was pronounced and definite it will find

[1] In a city each ward in primary meeting sends delegates to a city convention and this body elects delegates to the State convention to meet with the delegates from the counties. In some States the delegates elected at the city primaries go straight to the State convention or to a congressional district convention.

[2] In a great many States the State convention elects only four delegates (called delegates at large) to the National Convention, the other delegates being elected at congressional district conventions, two delegates being chosen from each district. Where this is the practice the district convention selects a candidate for presidential elector.

expression in the State convention. If, on the other hand, the voters at the primaries gave no direct indication of their will the delegates in the higher conventions must act according to their judgment.

IV. *The National Convention.* In July or August, all the State conventions having been held, the delegates from the States (and Territories) assemble as the great *National Convention.* This body, consisting of nearly a thousand men, meets in some convenient city, and after several days of discussion, expresses the views of the party upon public questions in the shape of a *platform* and chooses candidates for President and Vice-President.

123. The Presidential Campaign. After all the political parties have named their candidates the struggle for election begins. Political meetings are held, the claims of the candidates are urged, the platforms are explained and defended, and everything that can be done to influence voters is done.

The campaign, with all its faults, is a most wholesome element in our public life. It is the school-time of democracy. By it, men's attention is strongly attracted to public affairs, civic spirit is awakened, and voters are educated. The greatest objection to lengthening the presidential term is that to do so would be to deprive the people of the great educational advantage of frequent presidential campaigns.

124. The Election of the President. The campaign continues until the election day in November, when the voters render their decision. They do not vote for a President directly, but for electors as the Constitution provides (**146**). Since these electors are nominated and elected by a party they are morally bound to vote for the candidate of the party which elected them, and no elector has ever proved unfaithful to the party that elected him. The President is, therefore, really elected at the polls.

The electors chosen in November meet in their respective

No.....

OFFICIAL PRIMARY BALLOT.

Primary Election.. .....

.....Party.

Make a cross in the square [x] in front of as many names for each office as is indicated under the title of such office.

NATIONAL.

United States Senator.
Vote for one.

- ☐ JAMES H. FLYNN.
- ☐ GEORGE J. GLASIER.
- ☐ FRANK H. RILEY.

STATE.

Governor.
Vote for one.

- ☐ RICHARD ROE.
- ☐ JOHN ROSWELL.
- ☐ EDWARD H. SMITH.

CONGRESSIONAL.

Representative in Congress. District.
Vote for one.

- ☐ WILLIAM DUNNING.
- ☐ JAMES MARA.
- ☐ THOMAS J. WAGNER.

LEGISLATIVE.

State Senator. District.
Vote for one.

- ☐ WILLIAM BROWN.
- ☐ CASPER DUNN.
- ☐ MICHAEL J. MURRAY.

Representatives in State Legislature. District.
Vote for one.

- ☐ OWEN DOLAN.
- ☐ EDWARD GIBBONS.
- ☐ RICHARD HUGHES.

COUNTY.

Judge of Probate.
Vote for one.

- ☐ FRANK CAMPBELL.
- ☐ CHARLES SCULLEN.
- ☐ HENRY J. WILKINSON.

Circuit Court Commissioners.
Vote for two.

- ☐ CLIFFORD BISHOP.
- ☐ CLIFFORD CROSTIC.
- ☐ HENRY ROACH.
- ☐ HARRY SELSBEE.
- ☐ ORR C. TRASK.
- ☐ CHARLES WHITE.

Delegates to county convention.
Vote for.....

.....

.....

.....

.....

A Sample Ballot for Direct Nomination of Officers

States in January and vote for President and Vice-President. The results of this vote are despatched from the several States to the President of the Senate at Washington and on the second Wednesday in February Congress meets to count the votes. The person receiving the majority of the votes cast for President is declared to be elected, and the person receiving the majority of the votes cast for Vice-President is declared to be elected. When no person receives a majority of all the electoral votes, the Constitution provides that the House of Representatives shall choose a President and the Senate a Vice-President, and states precisely how the election shall be conducted (**148**).

125. Direct Nominations. In many States the convention system of nominating candidates has been abandoned and nominations are made by a direct vote of all the voters of the party. Under the plan of direct nominations the voters "go to a primary meeting, which is managed in practically the same way as a regular election, and vote directly for the candidates whom they wish to represent their party at the next election." In other words, under the direct system the voters select their own party candidates; they do not entrust the selection to party representatives, or to the action of party conventions. When county officers, for example, are to be nominated, the voters of a party, instead of electing delegates to a county convention authorized to nominate these officers, express their choice for candidates at primary elections held throughout the county, and the candidates who win at the primaries are put on the ticket as the regular party nominees. If a candidate for governor is to be chosen the voters of the party throughout the State express their choice at the primaries and the person most in favor at the primaries becomes the regular party candidate for governor.

The system of direct nomination is held in high esteem in many sections of the country and some reformers have

even proposed that the system be extended to the nomination of presidential candidates. Indeed, in some States, as in Oregon, North Dakota, Wisconsin, Nebraska, and New Jersey, presidential primaries are held and voters are given an opportunity to express by direct vote their preference in respect to presidential candidates.

QUESTIONS ON THE TEXT

1. What services do political parties render when they nominate candidates for office?
2. Describe the permanent organization of a political party.
3. Give an account of the primary meeting and point out the importance of the meeting.
4. Describe the party conventions above the primary meeting.
5. Give an account of a presidential campaign.
6. What is the duty of a presidential elector?
7. Describe the system of direct nominations.

SUGGESTIVE QUESTIONS AND EXERCISES

1. The beginning of all party nominations is in the Primaries. Remembering this, give an account of the nomination of a candidate for sheriff in States where the convention system is in operation (county convention); of the nomination of a candidate for Congress (congressional district convention); of a candidate for mayor (city convention); for a candidate for governor (State convention).
2. Are primaries in this State legalized? If they are not is there a strong sentiment in favor of legalizing them?
3. Are the politicians whom you personally know better or worse than their neighbors? (Avoid using or suggesting any names.)
4. How many electoral votes has this State?
5. What Presidents were elected by Congress?
6. Show that it is possible for a man to be elected President without receiving a majority of the votes cast.
7. Show that it is possible for a single vote at the polls to decide a presidential contest.

TOPICS FOR SPECIAL WORK

1. What the Party Machine has to do. **1**: 373–377.
2. Primary Election Legislation. **1**:378–384.
3. The Nomination of Candidates. **23**: 34–78.
4. Presidential Leadership. **10**: 25–41.
5. Party Finance. **10**: 218–229.
6. For the Subject of Direct Nomination consult "Primary Elections," by C. E. Merriam.

PART III

THE FUNCTIONS OF THE AMERICAN GOVERNMENT: ITS SERVICES

XXVII

THE FUNCTIONS OF GOVERNMENT

Introductory. In the first part of this treatise the great principles and fundamental ideas of the American political system were considered, and in the second part the formal organization of the several grades of government which are included in that system were studied. In this, the third part, we shall be concerned with the functions, or, as we may say, the services, of our government; but before we take up the particular topics of this division of our work it will be best to glance at the subject of governmental functions in general.

126. The Scope of Governmental Activity. The services rendered by the different governments of the earth vary with the racial instincts and the character of the civilization of the people whom the governments serve. As a general rule Teutonic and Anglo-Saxon peoples who are true to their political instincts are jealous of governmental authority, and are inclined to be chary of increasing the governmental functions, while Latin and Oriental peoples regard government with kindlier feelings, and are lavish in according power to it. The functions of government vary not only from country to country, but they also change in the same country from year to year. It follows, therefore, that any enumeration of the functions of government must be more or less typical in character. Such an enumeration is nevertheless useful, for it gives a general notion of the scope and nature of governmental activity.

A typical progressive government does the following things:

(1) It renders justice between man and man, and between man and the state.

(2) It provides a defense against foes.

(3) It protects and promotes its international interests.

(4) It supports itself by means of taxation.

(5) It borrows money in time of stress.

(6) It coins money and establishes standard weights and measures.

(7) It regulates commerce, domestic and foreign.

(8) It maintains a postal system and provides thoroughfares for travel and transportation.

(9) It conducts the election of public officers.

(10) It preserves the family as an institution of society.

(11) It regulates the acquisition and alienation of private property.

(12) It provides for the education of the young.

(13) It regulates industry and labor.

(14) It defines and punishes crime.

(15) It helps the poor and incapable.

(16) It cares for the morality, health, comfort and convenience of citizens.

127. Government and the Individual. The functions of government in all progressive countries are increasing and must continue to increase. Civilization is growing more complex, human interests are multiplying and conflicting with each other as never before, population is increasing with startling rapidity and is crowding into the cities, inventions and processes of manufacture and methods of business are changing the face of the industrial world. The circumstances of this modern life do not permit the large individual freedom of former days. In order to make the proper social adjustments under the new conditions government must step in and do things that it has not done before, and that in a past age it would not have ventured

to do, and with each new function added to government personal liberty is to some degree curtailed. The individual withers as the state grows more and more.

Political science cannot point out to the voter precisely what government should do and what it should not do, for the sphere of government cannot be circumscribed "by the ring fence of a definition," but political science can sound a note of warning. The most judicious of all men who have written on the subject of human liberty, John Stuart Mill, has sounded this note in the clearest tones.[1] "Whatever theory," he says, "we may adopt respecting the foundation of the social union, and under whatever political institutions we live, there is a circle around every individual human being which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person who has come to years of discretion within which the individuality of that person ought to reign uncontrolled either by any individual or by the public collectively. This reserved territory ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example." Here is a test that should be applied to every proposed extension of governmental authority. When government is permitted to invade one's private life and make regulations in respect to matters that do not directly and closely and powerfully affect the outer social world, human liberty suffers a loss for which no governmental service however great is likely to be a full compensation.

128. Individualism, Liberalism and Socialism. In the field of practical politics we find men differing widely in their views as to the proper sphere of government. Some would limit the province of government strictly to the defense of the nation against foreign foes, and to the protection

[1] Mill, "Political Economy," Vol. II, p. 560.

of persons and property against fraud and violence, leaving all other social interests to be attended to by private enterprise and effort. Those who believe in this let-alone (laisser-faire) policy may be styled the individualists of politics. They now form but a small part of the voting population of any free country.

Next to the individualists may be classed those who would add to the merely protective functions of government certain others, such as the management of the post-office, the establishment of public schools, the improvement of rivers and harbors, the maintenance of thoroughfares — social services that can without doubt be performed by the state better than by the individual. Those who favor this moderate extension of the functions may be called liberalists. They constitute by far the largest class of voters in almost every country of the world.

Lastly, there are the socialists who believe in an enormous increase in the functions of government. Under socialism the state would own and control not only all the means of transportation and communication, railroads, steamboats, canals, telegraph and telephone lines, but it would also own and control all the means and instruments of production, the mines and forests and farming lands, and shops and factories and mills. Under such a program individual enterprise would disappear almost entirely, and there would be substituted in its place the collective effort of society. The state would be a great joint stock company whose membership would comprise the whole body of citizens, and whose object would be to provide for the material wants of its membership. Of course if the state should be the sole producer it follows that it would also make a distribution of the products, giving to each person (each member of the joint stock company) his just portion of the goods produced. What the portion of a given individual would be would depend upon the quantity and quality of the labor which the individual performed. If a person

able to work performed no labor at all he would get no portion at all, and would consequently starve to death. Under the socialist program everybody able to work would be compelled to work. Socialism is exceedingly strong in some of the countries of Europe, especially in Germany, where the Socialist party outnumbers any other political group. In the United States the socialists are fully organized as a political party and are increasing in numbers. In a number of instances members of the Socialist party in this country have been elected to high office.

QUESTIONS ON THE TEXT

1. Enumerate the functions of a typical progressive government.
2. What circumstances of modern life tend to strengthen the state at the expense of the individual?
3. What rule does Mill give in respect to the limitation of governmental authority?
4. What is meant by individualism in politics?
5. Who are the liberalists in politics?
6. What is meant by socialism?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. Enumerate the functions of your town or city government. Is it doing anything that could be better done by private enterprise? What things are now being done by private enterprise that could be better done by the municipal government?
2. Where is there more individual liberty, in the city or in the country?
3. Prepare a ten-minute paper on, "The Municipal Functions of Glasgow." (Consult Shaw's "Municipal Government in Great Britain.")
4. Determine in which of the following instances there would be a violation of the rule laid down by Mill and given in the text: The Government — (*a*) compels everybody to be vaccinated; (*b*) forbids the reading of certain books; (*c*) forbids the sale of certain books; (*d*) furnishes the milk that must be drank; (*e*) furnishes the virus that must be used in vaccination; (*f*) compels everybody to attend church; (*g*) compels everybody to attend a certain church; (*h*) forbids the sale of oleomargarin; (*i*) compels dealers to label oleomargarin as such; (*j*) forbids the use of oleomargarin altogether; (*k*) compels parents to send their children to school; (*l*) compels parents to send their children to certain schools; (*m*) compels men to spell certain words in a certain way.

5. Of the following enterprises name one, if there is one, which should be undertaken by government in this country: (*a*) The operation of telegraph lines; (*b*) the operation of railroads; (*c*) the operation of trolley lines in cities; (*d*) the operation of coal mines; (*e*) the manufacture and sale of gunpowder; (*f*) the manufacture and sale of illuminating gas; (*g*) the manufacture and sale of ice; (*h*) the operation of a parcels post.

6. If government should undertake the enterprises named above to which of the several grades of government, local, State or federal, would each enterprise be assigned?

7. Of the functions of government enumerated on page 196, which is the most important? which is second in importance? which third? which fourth? which fifth? which sixth? Be prepared to give reasons for your arrangement.

TOPICS FOR SPECIAL WORK

1. The Functions of Government. **19**: 514–528.
2. Socialism. **19**: 500–512.
3. Outlines of the Socialist State. **22**: 277–323.
4. Personal Liberty vs. Governmental Authority. **1**: 392–397.
5. The Non-Essential Functions of Government. **1**:397–402.
6. Governmental Enterprise in the Non-Essential Functions. **1**: 402–410.

XXVIII

DEFENSE

129. Defense an Indispensable Function of Government. A nation must provide a defense against public foes. Here is a function of government that is indispensable. Every nation has its enemies, external and internal. A foreign power impelled by avarice or ambition or revenge or envy may wage war upon us, or a lawless element at home may threaten the security of life and property. The principle of self-preservation requires that a nation be prepared to resist the attacks of both these classes of foes, and self-respect demands that resistance be actually offered when offense is given. The doctrine that we should passively fold our arms and not resist an attack upon our persons or an invasion of our country is contrary to the teachings of experience and to the facts of human nature. Haste the day when war and lawlessness shall cease, but until they shall cease nations must be prepared to meet force with force.

130. National Defense. The defense of a nation is complete when it can hurl its entire strength against an enemy. In order to secure the strength which comes from unity and harmony the Constitution gives to the federal government the power of raising and supporting armies and navies (**56, 57**), and of making rules for their control (**58**). A State may not engage in war with a foreign power, except in case of actual invasion (**77**). The responsibility of declaring war rests with Congress (**55**). In giving to Congress the power to declare war instead of vesting the power with the President, the framers departed from the

usual practice of governments. The declaration of war hitherto had been a prerogative of the executive, but the members of the Convention of 1787 were not disposed to make the executive strong at the expense of the legislature. The instruments of national defense are the army and navy.

I. *The Army.* The Department of War and the office of the Secretary of War were created by an act of Congress in 1789. The regular army established by the new government consisted of only a few thousand men — a force just sufficient to keep the Indians in order. The policy of maintaining a small standing army, inaugurated in the beginning of our history, has been continued to the present time.[1] In time of war we have put into the field as many as a million of men, but in times of peace our army has always been small, ridiculously small when compared with the standing armies of the great powers of Europe.

The policy of supporting a regular army no larger than is consistent with national safety is undoubtedly sound. The army is always under the control of the executive (**92**), and if it were overwhelmingly large it might be used — as in the history of nations it often has been used — to crush out popular rights and establish a tyranny. Moreover, a large standing army is maintained at an enormous cost. The army of Russia consists of more than a million of men. These men produce nothing themselves, yet they consume a large portion of that which is produced by others. Congress may provide for a large army or a small one as it sees fit, but this provision cannot last longer than two years (**56**). In placing this limitation upon Congress the Constitution makes it impossible for a large

[1] Under the Act of 1901 the regular army of the United States is to consist of not less than 57,000 nor more than 100,000 soldiers. The regular army of France is more than 500,000; of Germany nearly 600,000; of Austria-Hungary nearly 400,000; of Italy nearly 300,000; of Great Britain, 250,000.

standing army to be imposed permanently upon the people without their consent.

In an emergency, when the regular army is too small for the needs of the hour, the federal government may call the *militia* to its assistance. The militia consists of practically all the able-bodied men in the United States between the ages of eighteen and forty-five. The full strength of the militia is quite fifteen million men, but only a small part of it (about one hundred thousand men) is organized and ready for fighting. For the purposes named in the Constitution (**59**) the President calls the militia into service, specifying the number of militiamen each State is to furnish. If a State should neglect to furnish its quota, the required number of men may be enrolled under the authority of the President. When in the service of the United States the militia is subject to the rules and discipline of the regular army (**60**) although the officers of the militia are appointed by State authority.

When troops additional to the regular army are needed, and when the purposes for which they are needed are not such as would under the Constitution justify the calling out of the militia, the President calls for *volunteers,* requesting from each State a number apportioned to its population. During the Civil War more than half a million men responded to the President's call for volunteers, and during the war with Spain (1898) two hundred thousand men were enrolled as volunteers. When the militia is not available, and volunteers cannot be obtained, there must be a *draft;* the names of those fit for military service are secured, and from these the required number is *drawn,* usually by lot.

The President is officially Commander-in-chief of the regular army and of the militia when it is in the service of the United States (**92**). A President has never personally directed the movements of armies in the field. The real management of a war falls upon the Secretary of War,

the head of the War Department. This officer has supervision of the army in times of war as well as in times of peace. He acts through the chief of a staff of trained officers who have direct control of the troops. A most important duty of the Secretary of War is to care for the material welfare of the army. In this he is assisted by the quartermaster-general, who attends to the clothing and the transportation of troops; by the commissary-general, who supplies the food; by the chief of ordnance, who supplies the arms; by the surgeon-general, who provides medicine and assistance for the sick and wounded; by the adjutant-general, who conducts the correspondence of the War Department.

It is estimated that ten per cent. of the population and wealth of the United States is situated on the sea-coast, exposed to destruction by hostile naval forces. The defense of this life and property is the duty of the War Department. The great seaports are defended by land batteries, consisting usually of powerful guns which rise from a pit, discharge their shells, and disappear to be reloaded. The waters in the neighborhood of a seaport may be sown with torpedoes which may be exploded by an electric spark produced by an operator on shore. The difficulty of defending a seaport is very great, for a modern battle-ship can shell a city if it is allowed to approach within ten miles of it. Nevertheless we have along our coast guns that can hurl projectiles the distance of twenty miles.

II. *The Navy.* The affairs of the navy were managed by the War Department until 1798, when Congress established the Department of the Navy, and created the office of Secretary of the Navy. The President is commander-in-chief of the navy, as he is of the army, but he delegates his authority to the Secretary of the Navy. Of course the actual fighting is done by trained seamen.

Although the people of the United States do not distrust a powerful navy as they do a large standing army, never-

theless it is only in recent years that systematic efforts have been put forth to build up a strong navy. About thirty years ago Congress began the policy of increasing the efficiency of the navy by adding to the number of fighting vessels and providing for a thorough training of the men. The war with Spain showed that the efforts of our statesmen to improve the navy have not been in vain. We have a navy upon which we may rely. Our ships have endurance and speed, and our guns fire quick and straight. In its fighting strength our navy ranks second among the navies of the world.

131. State Defense. For the defense of life and property within its borders the State relies upon its citizen soldiers, its militia. The right of the State to support a militia is guaranteed by the Constitution (**134**). In a few States the *organized* militia consists of only several hundred men; in most States it consists of several thousand men. In times of war, as we have seen, the militia is under the control of the President, but in times of peace it is subject to the orders of the governor. When the laws of the State are resisted and the local authorities are unable to suppress the lawlessness, the governor sends the militia to the assistance of the local forces. If the militia is unable to suppress the law-breakers, the State legislature, or the governor, may make application for aid to the President (**121**), who, if the case seems to warrant it, will send troops of the regular army to the scene of disorder. If the lawlessness interferes with the operation of the federal government, as with the carrying of its mails, or if it obstructs interstate commerce, the President may send federal troops and suppress the law-breakers without waiting for an application from the State authorities.

132. Local Defense. Besides the militia there are two other upholders of law and order within the State. These are the sheriff and his posse, and the local police force. The posse (*posse comitatus,* the county force) consists of all

the able-bodied men in a county (or city). These the sheriff may call to his aid at any time to suppress violence, although men who have not been drilled and disciplined are not likely to render efficient service. The local policemen and constables, of whom there are nearly one hundred thousand in the United States, are the every-day guardians of the public peace. They are "the eyes and ears as well as the hands of the body politic; not only the means of governmental apprehension, but of discovery; the agents of prevention as well as of cure."

133. Government and Martial Law. It should be noticed that in the United States those who wield the sword are under the control of civil officers. The general obeys the President, the officers of the militia take their orders from the governor, the police are controlled by a board of civilians. This subordination of the military to the civil power accords strictly with American notions of government. We have no place in our system for martial law — law which is administered by soldiers, and which is often at variance with the principles of civil liberty. By suspending the writ of habeas corpus citizens may be temporarily deprived of their civil rights and placed under martial law, but this can be done only in the name of the public safety (**64**). A State cannot maintain armed troops in time of peace and thus threaten the permanency of civil rights (**76**). Neither can the federal government in times of peace harass the people by quartering soldiers in the homes of citizens without their consent (**135**), and even in times of war such quartering must be done under the authority of civil and not under the authority of military law. Thus, while we make ample provision for the defense of the nation and the State, we have taken every precaution to prevent the instruments of defense from themselves becoming a menace to civil government and to civil liberty.

QUESTIONS ON THE TEXT

1. What causes compel a nation to provide a defense against possible foes?
2. What military powers does the Constitution give to Congress?
3. What has been the policy of the United States in reference to a standing army? What are the disadvantages of a large standing army?
4. What does the Constitution provide in reference to the militia?
5. What are volunteers? What is a draft?
6. Name the principal officers who conduct a war and state their duties. How is the sea-coast defended?
7. What has been the policy of the United States in reference to its navy?
8. Describe the militia system of a State.
9. What is a *posse comitatus*? What are the functions of the local police?
10. Explain how the military is kept subordinate to the civil authority of the United States.

SUGGESTIVE QUESTIONS AND EXERCISES

1. What have been the most fruitful causes of war in the past?
2. In which century in the history of the world have the greatest wars occurred?
3. Name five great military heroes. Should the incomparable honor which is accorded to military heroes be set down as one of the causes of war?
4. What does the United States spend each year upon its army and navy? What is this State's share of this amount? Compare this with the amount spent by the State for its public schools.
5. Why should Iowa as well as New Jersey contribute to the support of the navy?
6. Name a war which has been a blessing to mankind. Explain.
7. What is said in the constitution of this State in reference to a militia? In reference to the subordination of the military to the civil power?
8. Of how many men does the entire militia of this state consist? Of how many does the organized militia consist?
9. What services has the militia of this State rendered in recent years?
10. Which could we more safely dispense with, school-houses or battle-ships? Could we have one without the other?
11. Contrast the evils attending war with its beneficent features.
12. Do you sincerely wish that there will never be another war? What things can you as an individual do to help the cause of peace?

TOPICS FOR SPECIAL WORK

1. War. 7: 266–279.
2. The Department of War: Consult The National Administration, pp. 131–151, by J. A. Fairlee.
3. The Department of the Navy: Consult Fairlee, pp. 152–164.

XXIX

INTERNATIONAL RELATIONS

134. International Affairs Regulated by the Federal Government. The management of international affairs is a service of the highest importance, and the power to direct foreign relations is a sovereign power. In the United States all power in respect to matters of an international character is lodged in the federal government, the organ of our national sovereignty. International affairs have never been regulated by the State. Under the Articles of Confederation negotiations with foreign countries were conducted by the Congress; under the Constitution States are expressly forbidden to enter into political relations with foreign countries (**72**), and the management of international affairs is given to the President and Senate (**95**).

135. Ambassadors, Ministers and Consuls. The international political affairs of a state are conducted by its diplomatic representatives, of whom the *ambassador* is the highest in rank. The ambassador represents the *person* of the executive of the country from which he comes, and he receives for this reason the highest personal respect and consideration. A *minister,* who is next to the ambassador in rank, represents the *government* from which he comes, but not the personality of the executive. In foreign courts an ambassador, being a personal representative of a ruler, is admitted to an audience with officials ahead of a minister. For a long time a minister was the highest diplomatic representative of the United States, but when it was found that under the rules of precedence in favor of am-

bassadors a minister of the United States was sometimes kept waiting for an official audience while the ambassador of some petty kingdom was being received, Congress (in 1893) created the rank of ambassador. The United States now has ambassadors for Great Britain, Germany, France, Italy, Austria, Mexico, Russia, Brazil, Japan and Turkey. In other countries we are represented by ministers.

Ambassadors and ministers, their property and their households, are exempt from the laws of the country to which they are accredited. The residence of a foreign minister is, according to international law, a little patch of territory under the dominion of the country which the minister represents. If the Chinese minister at Washington should commit a crime, Chinese and not American authorities must try the case and administer the punishment. If a case should arise where a judicial decision affecting diplomatic agents is necessary, it must be taken direct to the Supreme Court, no matter how trivial it may be (**110**).

The duties of a diplomatic representative depend upon the powers which his government has conferred upon him and upon the relations which exist between his government and the one to which he is sent. In general, he represents and defends the interests of his country. He keeps the home government informed upon topics of public interest, especially upon political topics, but he must not interfere in any way with the politics of the country where he resides. When a citizen of his own country has been injured by a violation of a rule of international law he seeks a remedy from a foreign government, and when a treaty is made he usually serves as the channel of negotiation.

A *consul* is a business agent of a government sent to a seaport or inland city to look after the welfare of citizens of his own country. He does not represent a government, he is not a diplomatic agent, and he does not enjoy the

honors and immunities of a minister. Sometimes a *consul-general* is appointed to supervise all the consuls in the country to which he is sent.

The first duty of the consul is to aid his countrymen in securing their commercial rights. Among his other duties are the following: He places the consular seal upon official acts of the foreign government; he certifies to marriages, births and deaths among his countrymen in his consular district; he certifies invoices; he administers on the personal property of deceased persons when there is no representative at hand. The consul receives applications for passports, and, when specifically authorized to do so, grants them. He also grants passports in the absence of the regular diplomatic representatives.

136. Treaties. When two or more states are at war and desire peace, or if in times of peace their commercial or monetary systems require adjustment, or if their boundaries need to be defined, or if in any way their international affairs are to be regulated, they may accomplish any of these objects by entering into a solemn compact or agreement called a *treaty*. A treaty, when made by sovereign states and signed by the proper diplomatic agents, and ratified by the governments of the signatory powers, becomes the law for all the states entering into the compact. In the United States a treaty concluded by the federal government is the supreme law of the land (126), and any State law in conflict with a treaty is null and void. Since a treaty is simply a law, Congress may repeal a treaty by passing a law contrary to its provisions, or an existing law may be repealed by the terms of a new treaty. A treaty which is contrary to the Constitution is void.

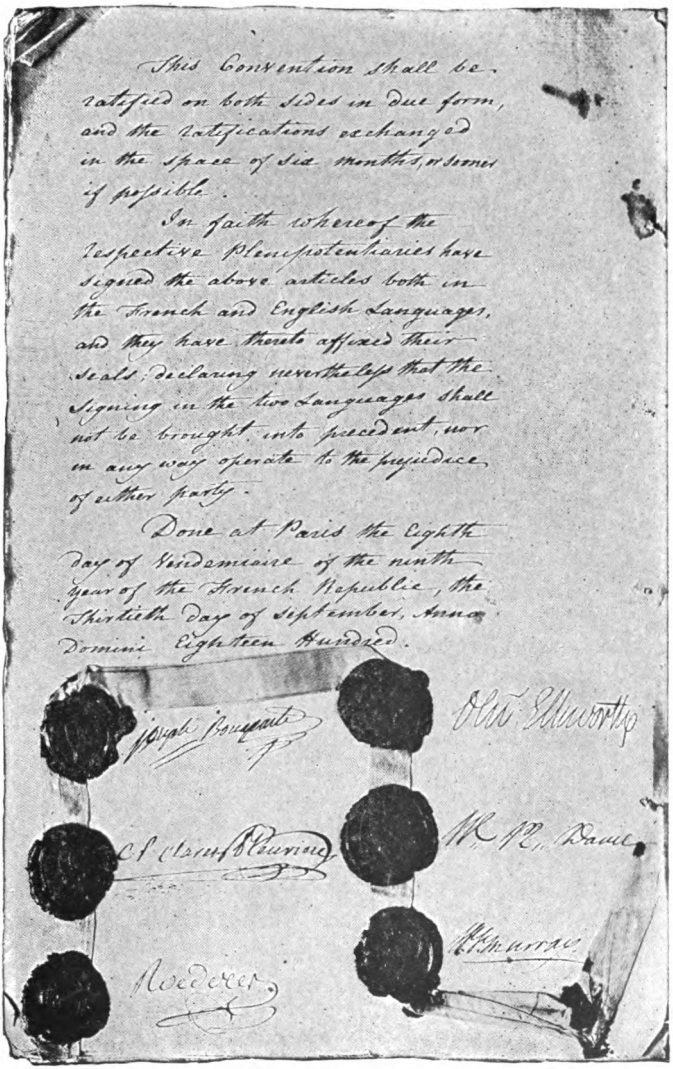
If a citizen violates a treaty his government will punish him as the violator of a law; but suppose the state itself should violate one of its treaties, is there a power to punish the state? There is no power but the sword of the aggrieved country. The violation of treaty obligation is uni-

versally regarded as a just cause of war. But suppose a powerful state violates a compact which it has made with a puny state? In such a case punishment through war is out of the question and the weak state must rely upon the natural operation of the law of nations. "In the eye of international law treaties are made to be kept," and if a powerful nation persistently and perversely breaks its treaties it will incur the hostility of its neighbors and sooner or later these will combine and force it to abide by the rules of international law.

The President, acting through the Secretary of State and diplomatic agents, negotiates treaties with foreign powers. After a treaty has been framed, if it meets with the approval of the President, it is sent to the Senate, where it must be ratified by a two-thirds vote (**95**). If it is successful in the Senate it is sent to the foreign government for ratification. When it has been ratified by the foreign power the treaty is law for all the states whose governments have signed it.

137. Arbitration. A treaty provides for the peaceful intercourse of two or more nations in the future. How shall questions and disputes arising out of past transactions be settled? One nation has wounded the pride of another, or has trespassed upon its boundaries, or damaged its commerce, or maltreated its citizens; how shall the injured nations find redress without declaring war? Nations which are capable of a humane and enlightened policy may find a peaceful exit from the most exasperating situations: they may submit their differences to a court of *arbitration*, just as private citizens often submit their differences to arbitration in order to avoid a battle in the courts of law.

Nations wishing to settle a dispute by arbitration enter into a preliminary treaty, and agree upon a method of selecting the members of the arbitration board, appoint a time and place for the meeting of the board, and define precisely the question to be settled. The arbitrators, like


This Convention shall be
ratified on both sides in due form,
and the ratifications exchanged
in the space of six months, or sooner
if possible.
In faith whereof the
respective Plenipotentiaries have
signed the above articles both in
the French and English Languages,
and they have thereto affixed their
Seals. Declaring nevertheless that the
Signing in the two Languages shall
not be brought into precedent, nor
in any way operate to the prejudice
of either party.
Done at Paris the Eighth
day of Vindemiaire of the ninth
year of the French Republic, the
Thirtieth day of September, Anno
Domini Eighteen Hundred.

Portion of a Treaty between France and the United States, showing Seals and Signatures

impartial judges, listen to the claims of the several states, investigate and weigh the facts pertaining to the case, and render a decision in accordance with the facts and the principles of justice. When the decision of a board of arbitration has been fairly obtained, all the nations affected by it are under the most solemn obligations to acquiesce in it.

During the nineteenth century international disputes were settled by arbitration more frequently than ever before, and in the number of cases submitted to arbitration the United States led the nations of the world. The increasing success of arbitration, and the expressed desire of many of the great powers to adopt it as a substitute for war, have encouraged lovers of peace to look forward to a time when the countries of the earth shall agree to submit all differences to a permanent board of international arbitration. If such a tribunal shall be constituted and its decisions obeyed, peace may be permanent and the money and talents and energy that are devoted to the support of war will be devoted to commerce and industry.

QUESTIONS ON THE TEXT

1. Where is power in respect to foreign affairs lodged?
2. What is the difference between an ambassador and a minister? What is the legal position of an ambassador resident in a foreign country?
3. What are the duties of an ambassador or minister?
4. What is a consul? a consul-general? What are the duties of a consul?
5. How do the diplomatic representatives of the United States receive their positions?
6. What is a treaty? How are treaties made? How are they enforced?
7. What are the duties of a court of arbitration? What has been the example of the United States in respect to arbitration?
8. How may the permanent peace of the world be secured?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Hague Tribunal.* This is a permanent court of arbitration established for the settlement of disputes without recourse to

war. When a case comes before the court for settlement each party (state) to the controversy chooses two arbitrators and these choose a fifth member known as the umpire. Nearly all the important nations are represented in the tribunal and each member (nation) agrees to submit its disputes to the court except in cases involving national honor or vital interests.

2. Name some of the great men who have represented this country at foreign courts. Who is our ambassador to Great Britain? to Germany? to France?

3. What is a *chargé d'affaires?* an envoy extraordinary?

4. Name the most celebrated treaties which the government of this country has entered into and state the leading terms of each. By what treaty has this country profited most?

5. What is the difference between a "convention" and a treaty?

6. Upon what occasion and for what causes have ministers of foreign countries been requested to leave the United States?

7. Name the principal questions which the United States have submitted to arbitration. Give an account of the Alabama claims.

8. Could the decisions of a permanent international court of arbitration be enforced if all the nations should disarm?

9. What influences are now at work tending to bring about universal peace? What influences are at work tending to destroy peace?

10. Give an account of the "Monroe Doctrine."

11. A secretary of the British ambassador was arrested, brought before the judge of a New England town court, and fined for running an automobile too fast: Did the judge have the right to impose the fine?

12. What is meant by "mediation" in international affairs?

TOPICS FOR SPECIAL WORK

1. Treaties. 7: 280–292.

2. The Senate and the Treaty Meeting Power. 3: Vol. I, 107–110.

XXX

TAXATION

Introductory. We now come to the function of *taxation*, or the orderly collection of revenue for the support of government. The science which treats of public expenditures and of the means of securing funds with which to meet these expenditures is called *public finance*. Since under our dual system of government taxation is a concurrent function (p. 38) exercised with sovereign power by the State as well as by the federal government, and since each government determines its own expenditures, public finance in the United States is resolved into two sharply defined systems — national finance and State finance.

An adequate study of the taxing function requires the consideration of the following topics: (1) Taxation in its General Aspects, (2) National Finance, (3) State Finance, and (4) Public Debt. In this chapter we shall dispose of the first of these topics.

138. The Different Kinds of Taxes. As we have heretofore learned (p. 17), government in America must receive its revenue through the consent of the legislature. When the legislature makes a general call upon the citizens for contributions for the support of government, it is said to tax them. When the levy or call is properly made the contribution is compulsory and cannot be escaped. A *tax*, therefore, may be defined as an enforced contribution of money levied by the legislature on persons, property or income, for the support of government. Property is the thing universally taxed. If any property escapes taxation, it is not as a rule the fault of the law, for legislators attempt to

tax almost everything upon which a tax can possibly be laid. For the sake of system they divide property and other subjects of taxation into classes and name the tax according to the class upon which it is levied. The kinds of taxes which are usually collected are the following:

1. The *general property tax,* levied (*a*) on *real property,* which includes lands and buildings and other things erected on land, and (*b*) on *personal property,* which includes such things as household furniture, money, goods, bonds, notes of promise, stocks, mortgages, jewelry, horses, carriages, and farming implements.

2. The *income tax,* levied upon income whether from wages or salary or profits upon business.

3. The *inheritance tax,* levied upon property acquired by inheritance or will. Sometimes this tax is regarded as an income tax, an inheritance or legacy being considered as nothing more than a part of the yearly income.

4. The *corporation tax,* levied upon private corporations. This tax sometimes takes the form of an income tax levied upon the corporation regarded as a person; sometimes it is levied upon the bonds and stock of the corporation. In a few States it is levied upon the earnings of the corporation.

5. The *franchise tax,* levied upon a privilege granted by government. When a city council confers upon a corporation the right to operate a trolley line upon a certain street, the right conferred is a franchise, and upon the value of this right the franchise tax is laid. Though franchises are not material, visible property they have nevertheless been declared by the Supreme Court of the United States to be property. Sometimes franchises have an enormous value. For example, while the tangible property, the rolling stock, rails, wires and power-houses of a trolley company may be worth only a million dollars, the right to use the street (the franchise) would not be sold for a sum several times as great. Sometimes a corporation is compelled to pay both

a franchise tax and a property tax on its material possessions.

6. The *poll* or *capitation tax* is a sum ranging from one to four dollars levied as a personal tax. It is a tax on the person as a person, and not as a possessor of property.

7. *Customs duties,* levied upon articles imported from a foreign country. In some countries customs duties are levied upon exported articles, but this cannot be done in the United States (**67**).

8. *Excises* or *internal revenue taxes,* levied upon goods manufactured within the country. The articles which yield most of the internal revenue are: distilled spirits, beer, ale, tobacco and oleomargarin and playing cards. The corporation tax is also regarded as an excise.

9. *License taxes,* collected from merchants, peddlers, hack-drivers, showmen, saloon-keepers, and others, for the privilege of transacting business. The license tax resembles the franchise tax.

10. *Fees and special assessments,* collected as a partial payment for services rendered by the government. The charge for issuing a marriage certificate is an example of a fee, while a charge made for connecting a private drain with a public sewer is an example of a special assessment. Fees and special assessments are not always taxes properly so called.

139. Direct and Indirect Taxation. When a tax is levied upon the very person who is likely to bear the burden, it is said to be *direct.* The general property tax, the income tax, the inheritance tax, the corporation tax, the franchise tax, and the capitation tax are direct taxes. When a person pays one of these taxes he cannot easily shift it to another: the burden remains where it is first placed. When a tax collected from one person is transferred in whole or in part by that person to another, it is said to be *indirect.*

When an importer of silk pays a customs duty of one

dollar on a yard of silk, he expects to add a dollar to the price of the silk, and thus transfer the tax to his customer. When a manufacturer of cigars pays an excise tax of a dollar on a box of cigars he adds a dollar to the price of the cigars. The customs duties and the internal revenue tax are therefore indirect taxes. Many fees and licenses may also properly be classed with indirect taxes.

140. The Principles which should Govern in the Levying of Taxes. Four rules or maxims have been laid down for the guidance of the law-maker in matters of taxation. They are as follows:

I. (Equality.) Citizens should contribute toward the support of government as nearly as possible in proportion to their respective abilities.

II. (Certainty.) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person.

III. (Convenience.) Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient to the contributor to pay it.

IV. (Economy.) Every tax ought to be so contrived as both to take out and keep out of the pockets of people as little as possible over and above what it brings into the public treasury.

The above maxims were stated by Adam Smith (1776), and they have acquired almost universal authority. Legislators always keep them in mind, and follow them with more or less fidelity. Sometimes, however, in order to avoid the resentment or opposition of the people they ignore the maxims and follow the rule of expediency. In accordance with the policy of a celebrated Frenchman (Colbert), they so pluck the goose (the people) as to procure the largest amount of feathers with the least possible amount of squawking.

141. The Difficulties of Taxation. A little consideration will show that a just and fair system of taxation is difficult to devise. To be sure, if all men would come forward with a truthful statement of the amount of their property, just taxation would be a simple affair; but experience teaches that all men will not do this. Though it is easy to say that every one ought to pay taxes according to his ability — that is, according to his income, or according to the value of the property from which he derives his income — it is very difficult to discover the amount of a man's income, or to determine the true value of his property. Before property can be taxed the officers of the law must point to its existence, and it is not always possible to do this. In these days, if they choose to do so, men can conceal from the eyes of the tax-gatherer a great deal of property that ought justly to bear a share of the public burden. In his iron safe a man may have bonds, or stocks, or notes of promise, which, though they yield him a handsome income, do not appear on the tax-books as property. The concealment of such property presents one of the greatest of the difficulties which surround the subject of taxation.

Another great difficulty is connected with the overlapping of jurisdictions. A railroad running through several States pays taxes in all; a man residing in one State and holding personal property in another is liable to be taxed on that personal property in both States; a person living in one State, owning property in another and carrying on business in a third is subject to the tax laws of three States. This overlapping of authority is inherent in our political system, and is bound at times to result in entanglements, and in wrong or unjust taxation.

A third great difficulty connected with the levying of a tax is to foresee its final *incidence,* that is, to foresee the person upon whom the burden of the tax will finally fall. For a tax will not always remain where it has been laid,

but will be shifted from one person to another until it at last falls upon a person who cannot shift it.

QUESTIONS ON THE TEXT

1. What is taxation? What is public finance?
2. Where does the power to tax reside? What is a tax?
3. Name and describe each of the ten different kinds of taxes.
4. What is a direct tax? an indirect tax?
5. State Adam Smith's four maxims of taxation.
6. What was Colbert's maxim of taxation?
7. What are some of the difficulties which lie in the way of a just and fair system of taxation?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Cost of Government.* It is plain that expenditures for government in the United States must be very heavy, for there are three highly organized governments to be supported: the federal government with its army and navy and courts of law and high officials and thousands upon thousands of employees; the State governments with their numerous departments; the local governments with their school system and charitable institutions and highway improvements and police and sanitary service. The federal government spends about $800,000,000 a year, State and Territorial government about $200,000,000, local government about $1,000,000,000, making a total public expenditure of $2,000,000,000 a year. These numbers in themselves mean nothing — they are too large for the mind to grasp — but comparison enables us to comprehend their significance. $2,000,000,000 is about one-twelfth of the combined annual earnings of every man, woman and child in the United States. The people, therefore, contribute to government in a year about as much as they earn in a month.

2. *Graduated or Progressive Taxation.* It is sometimes contended that one's duty in respect to the payment of taxes should be measured, not by ability, but by sacrifice. According to this view a tax is burdensome, not in proportion to what is paid, but to what is left. To equalize the sacrifice of taxpayers a graduated or progressive tax has been proposed. Under the workings of this tax the rate increases with the amount of property. For example, if A, B, C and D are worth respectively $10,000, $20,000, $30,000 and $40,000, a scheme of progressive taxation might impose upon A a rate of one per cent., upon B a rate of two per cent., upon C a rate of three per cent., and upon D a rate of four per cent. D's property is only four times as great as A's, yet it pays sixteen times as much in taxes.

3. *The Single Tax.* The most radical of tax reforms is the plan by which all revenues, federal, State and local, are to be raised from

a single tax imposed on land. According to this plan, men should contribute to the support of government, not in proportion to what they produce or accumulate, but in proportion to the value of the natural opportunities they hold; and it is contended that the landholder is the great monopolist of natural opportunities. The single tax would be laid upon land as such, and not upon the improvements upon land. The tax upon a vacant lot, provided it were as favorably located, would be as heavy as the tax upon a lot improved by a magnificent structure. The fundamental principle of the single tax is this: The individual should get the advantage of all improvements upon land, while the government (society) should get the advantage of favorable location, and of the increased values that accrue to land in a community which is progressive and which is increasing in population.

4. Show that taxation played an important part in each of the following events: (*a*) Wat Tyler's Rebellion; (*b*) The American Revolution; (*c*) The French Revolution.

5. Look about you and see what government does for the people, itemize these services and decide whether they are worth the labor of all the people for one month in the year.

6. Is it just that all citizens should pay taxes? Do all citizens have to pay taxes? (Do not be too sure of your answer to this question.)

7. For what do people pay taxes most cheerfully?

8. Of the several kinds of taxes mentioned in the text name the one which is easiest to collect; name the one which is easiest to be paid; name the one which is most objectionable.

9. If government lays an income tax, is it right that incomes below a certain amount, say $1,000, should escape the tax?

10. Should the expenses of a Fourth of July celebration be paid out of the public funds?

11. "Suppose you own a farm worth $5,000 and owe $4,000 toward the purchase price; how much are you worth? On how much should you pay taxes — $1,000, $5,000, or $9,000?"

12. State the evils of parsimony in public expenditures; the evils of extravagance. Which are the more dangerous? Read Prov. xi, 24.

13. What does the constitution of this State provide in reference to taxation?

14. Is there an income tax in this State? If so, explain its nature and workings.

15. Is it just that a man who owns a little property should be taxed and that a man who receives a large salary and who owns no property should escape taxation?

16. Are there any progressive taxes in this State? If so, give an account of them.

17. Discuss progressive taxation in reference (*a*) to its justice, (*b*) to its expediency, (*c*) to its effect upon fortune building.

TOPICS FOR SPECIAL WORK

1. Defects in the General Property Tax. 1: 411–419.
2. Excises. 17: 169–181.
3. Municipal Franchises. 1: 456–463.
4. The Income Tax. 19: 577–582.
5. The Incidence of Taxation. 17: 248–258.

XXXI

NATIONAL FINANCE

142. The Extent of the Federal Taxing Power. Nowhere else does the nature of the relation between the State and the federal government appear more clearly than in their power in reference to taxation. Recognizing that revenue is the life-blood of government, the framers of the Constitution gave to Congress an almost unlimited power to tax (**44**), and at the same time reserved to the States the power of raising their own revenues in their own way in such amounts and for such purposes as they might deem wise and proper. They restricted the taxing power of Congress in only three particulars: they provided (1) that duties and excises must be uniform throughout the United States (**45**); (2) that direct and capitation taxes must be apportioned among the States according to population (**66**); and (3) that duties cannot be laid on articles exported from any State (**67**). Except only as it is limited by these three provisions, Congress is free to levy any kind of tax it may see fit for any amount it may desire.

143. National Expenditures. At the opening of every regular session, Congress receives the report and recommendations of the Secretary of the Treasury, containing detailed estimates of the sums necessary for the support of the national government. With these estimates one may begin the study of national finance. They are prepared by the heads of the several departments, each stating the amount of money which he thinks his department will need

during the next fiscal year.[1] The estimates of expenditure for the fiscal year 1912 will give an idea of the magnitude of national finance:

ESTIMATES OF EXPENDITURES FOR 1912

Objects	Amount
Legislative establishment	$ 7,193,784
Executive establishment	43,246,776
Judicial establishment	1,314,600
Foreign intercourse	4,314,216
Military establishment	93,246,776
Naval establishment	117,924,832
Indian affairs	8,146,260
Pensions	153,688,000
Public works	117,066,911
Miscellaneous	72,696,778
Permanent annual appropriations	129,575,924
Grand Total	$748,414,857

Though the Secretary of the Treasury presents to Congress the " Book of Estimates " containing the details of these enormous estimates, not a dollar of the estimates can be raised constitutionally without the consent of the Congress (**69**). As a matter of practice, the consideration of the estimated expenditures begins in the House of Representatives, where the recommendations found in the Book of Estimates are referred by the Speaker to the proper committees.

The committees virtually control federal expenditures. There is no limitation upon their power of appropriation, except that any appropriation for the support of the army shall not be made for more than two years (**56**). They take the estimates submitted by the Secretary of the Treasury and do with them as they please. Sometimes they accept them, sometimes they modify them, but often they ignore them altogether. It is their function to prepare

[1] The fiscal or financial year begins July 1 and extends to July 1 of the following year.

bills providing for the expenses of the government; and in this exercise of their duty they are entirely independent of executive authority. Quite often they invite treasury officials to assist them and advise them, but they are under no constitutional obligation to do so. The committees express their judgments in reference to the proper expenditures in the form of appropriation bills. These, like all other bills, must run the gauntlet of legislation. They must pass both houses and receive the signature of the President. When they have received the signature of the President and have become laws, the first step in national finance has been taken: it has been determined how much money shall be spent for the support of the federal government.

144. Federal Taxation.—(Indirect). The second step in national finance is taken when Congress passes the laws for raising the money which it has decided to spend. While private individuals ordinarily estimate their income first and then decide upon their expenditures, governments are accustomed to estimate their expenditures first and to attend to the matter of income afterward. Bills for raising national revenue must originate in the House of Representatives (**36**), because the House directly represents the people. Post-office bills and bills relating to the mints and to the sale of public lands may originate in the Senate, and any revenue bill whatever may be modified to almost any extent in the Senate. The House Committee of Ways and Means has exclusive control of bills for raising revenue. Since this committee prepares the tax bill for the nation, it is justly regarded as the most important committee in Congress.

In the beginning of its history the federal government adopted the policy of raising its revenue by *indirect* taxation, and only in times of war has it departed from its original plan. The first Congress (1789) established a *tariff* — a law imposing customs duties on imports — and all succeeding Congresses have followed its example. Tariff

or customs duties are collected, by government officials, at ports of entry, from the importers of foreign goods. The duties are *ad valorem* when they are levied at a certain rate per cent. on the money value of the goods at the original place of shipment. They are *specific* when levied on articles according to quantity or number. For example, if the duty on gloves is forty per cent. *ad valorem,* a box containing six dozen pairs of gloves worth fifteen dollars a dozen produces a tax of thirty-six dollars. If the duty on gloves is *specific,* at eight dollars per dozen, the box of gloves in question produces a tax of forty-eight dollars.

The customs tax yields more than half of the national revenue, and more than half of the customs duties are collected at the port of New York. The customs tax is levied upon several hundred articles, but most of the tariff revenues are collected from manufactures of wool, cotton, silk, iron, copper and tin, and from sugar, fruit, liquor, wines, cigars, drugs and chemicals (p. 263). Among the articles admitted free of duty are: coffee, tea, anthracite coal, books over twenty years old, dyewoods and fertilizers.

Federal revenues not raised by duties on foreign goods are for the most part derived from excises — taxes on articles produced in the United States and from a corporation tax, which is regarded as an excise (p. 217). For a long time in our history excises were unpopular and were seldom levied. At the outbreak of the Civil War (1861), however, the situation demanded that large sums be speedily raised through taxation. Internal taxes thus became necessary, and almost every article, trade and profession was taxed. When the war was over the excise was made much lighter. At present only such articles as alcoholic liquors, tobacco, cigars, cigarettes, snuff, oleomargarin and playing-cards are subject to the internal revenue tax.

145. The Collection of Federal Taxes. Customs taxes are

collected at about one hundred and twenty ports of entry by United States treasury officials known as collectors of customs. When the customs for any reason are not paid the goods are held in the custody of the collector until the tax is forthcoming.

For the purpose of collecting the internal revenue the country is divided into districts. For example, Pennsylvania is divided into four internal revenue districts, in each of which there is a federal collector of internal revenue, assisted by a corps of deputies. The deputies visit the distilleries and breweries and cigar and tobacco manufactories in the district and bring all taxable goods under the workings of the law. The collectors of internal revenue also collect the federal corporation tax.

The federal government collects its revenue is an economical manner. The cost of collecting the customs is only about three per cent. of the amount collected, while the cost of collecting the internal revenue is even less.

The method by which the federal taxes are collected is popular as well as economical. Collectors receive the taxes in factories and custom-houses and do not attract the attention of the public. If they should come directly to individuals to demand the taxes they would doubtless be unwelcome visitors. The direct collection yearly of forty-five dollars — the approximate amount per voter that is required to support the federal government — might seem to a man in Texas or in Maine to be a very heavy tax for the support of the government in Washington, and might be accompanied by difficulties.

146. Direct Federal Taxes. Although federal taxation is mainly indirect, direct taxes may nevertheless be laid. In fact, the federal government has upon five occasions (1798, 1813, 1815, 1816, 1861) levied direct taxes. Decisions of the Supreme Court have determined that the capitation or poll-tax and the tax on land are direct taxes within the meaning of the Constitution (**66**).

The workings of a direct federal tax may be made plain by an illustration. Suppose the federal government wishes to raise eighty million dollars from a land tax. It must apportion this amount to the several States according to population. The State of New York with a population say of ten millions, or one-tenth of the entire population of the United States, would pay one-tenth of the tax, or eight million dollars; Ohio with a population of five millions would pay one-twentieth or four million dollars: Ohio, therefore would pay one-half as much as New York. This would not be just for the total value of the land in Ohio is not half the total value of the land in New York. Because the constitutional provision no longer permits an equitable distribution of a direct tax it is not likely that the federal government will again resort to this form of taxation.

In 1894 Congress passed a law levying a tax on incomes; but the Supreme Court of the United States practically nullified the law by declaring that an income tax is a direct tax and must be apportioned among the States according to population. The effect of this decision is to restrict the federal government to excises and customs as the main source of revenue. A just and equitable direct federal tax will not be possible until the Constitution is amended so as to permit the levying of a federal income tax without regard to population.

QUESTIONS ON THE TEXT

1. What are the powers of the federal government and what are the powers of the State in reference to taxation?
2. What three restrictions does the Constitution place upon the taxing power of Congress?
3. What is the "Estimate of Expenditures"? Name some of the items in this estimate.
4. To what extent does the executive department determine appropriations?
5. In which House do bills for raising revenue originate? Why?

6. What is a tariff? What is the difference between *ad valorem* and specific duties?
7. What articles yield the greater part of the federal revenue? What articles are admitted free of duty?
8. What articles are subject to the internal revenue tax?
9. How are the federal taxes collected?
10. What are the advantages of indirect taxation for federal purposes?
11. What kind of taxes are *direct* within the meaning of the Constitution?
12. Illustrate the workings of a direct federal tax.
13. Can the federal government levy an income tax?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. Estimate how much this State contributes to the support of the federal government, assuming that it contributes according to its population. Is this sum greater or less than the amount raised for the purposes of the State government?
2. Do the people who live at a port of entry pay all the taxes that are collected at the custom-house?
3. An orator wishing to illustrate the generosity and patriotism of his people pointed out the fact that three times as much of the internal revenue tax was paid in his State as in any other State. Point out the fallacy of the illustration.
4. Collect all the provisions of the Constitution that bear on the subject of taxation. Compare the Constitution with the Articles of Confederation in respect to taxation.
5. Which would you prefer to pay, direct or indirect taxes?
6. What is meant by smuggling? What articles are easily smuggled? Should taxes on these articles be light or heavy?
7. Name the principal ports of entry in the United States? What is done with the money which is collected at these ports?
8. Is this State in favor of a federal income tax?
9. Is the money you pay for a postage-stamp a tax?
10. Of the articles which are mentioned in the text as being taxed are there any which should go on the free list?
11. Under the Constitution can the Senate originate a bill to revise the tariff?
12. What is the difference between an appropriation bill and a revenue bill?

TOPICS FOR SPECIAL WORK

1. Congressional Finance. 1: 436–440.
2. The Payne-Aldrich Tariff (text). 1: 442–448.
3. The Collection of the Federal Revenue. 1: 448–452.
4. Taxation in the United States. 19: 550–558.

XXXII

STATE FINANCE

147. The Taxing Power of the State. In the days of the Confederation the power of the State to tax was full and complete, but by the adoption of the Constitution the taxing power of the State was to some degree restricted and abridged. Since one of the chief objects of the Constitution was to secure easy trade relations between the States, taxation on exports and imports was prohibited to the States and placed under the control of Congress (**74**). With the view of further protecting the freedom of commerce, the Constitution forbids any State to levy without the consent of Congress any tonnage duty, that is, any tax on the carrying capacity of a vessel (**76**) — a prohibition which applies to all instruments of commerce. A State cannot impose a tax on "tonnage passing through, from or to a State or foreign country, be it on railway, canal, river, or otherwise." Moreover, since "the power to tax is the power to destroy," a State cannot tax the agencies by means of which the federal government is enabled to exercise its functions: it cannot tax the bonds of the federal government, or its property, such as its lighthouses and post-office buildings, or the salaries of its officers, or the public money in its treasuries, or the metals in its mints. Aside from these restrictions, the State is free to tax all taxable objects within its borders.

148. The Authority for State and Local Expenditures. Although they may differ somewhat in detail, the financial system of the States are quite uniform in their workings. Authority for all public expenditures within each State

flows directly or indirectly from its constitution and its legislature. Expenses of the State government are estimated and levied directly by the legislature, and are usually comparatively light. In some States the constitution limits the amount which can be levied in one year.

The heavy expenses of local government are met by taxation imposed by the minor legislative bodies, by the municipal council, or board of county commissioners — a legislative body as far as taxation is concerned — or town-meeting, or the township supervisors or trustees. Cities, counties, and other minor civil divisions are strictly under the control of the State government, and the limits of their power to tax are usually defined by the higher authority. In some States the limitations are fixed by the legislature, in others by the constitution. In about one-third of the States counties are not allowed to tax beyond a certain per cent. of the assessed valuation of property. Municipalities, in the matter of taxation, are often restricted by the terms of their charters. Taking the country over, however, the localities are quite free to tax themselves as they see fit. The most that the legislature or the constitution undertakes to do is to throw around the local taxing power such safeguards as will prevent bankruptcy. Since the greater part of the sum paid for taxes is levied by local authority with the almost direct sanction of the voters themselves, it can almost be said that the people *are not taxed* — for they really tax themselves.

149. The General Property Tax. While national taxation is almost wholly indirect, State taxation is almost wholly direct. In the State the general property tax is the great source of revenue. This tax reaches all property, real and personal, located within the boundaries of the State. When the owner of property resides outside the State, he does not for that reason escape taxation.

In the payment of the general property tax the tax-

payer should bear a burden proportioned to his wealth; all the property of every person should contribute according to its true value. This, as has been seen, is a fundamental principle of taxation. In order to realize this principle of equality and justice when levying the general property tax the government must set in motion an elaborate taxing machinery, and must carefully control all the processes of taxation. Its officers must discover all the property of every person, and must place thereon a fair valuation; it must provide agencies for correcting unjust and unfair valuations; it must have officers for collecting the taxes and means of enforcing payment; finally, it must, in the name of public policy, exempt certain classes of property from the payment of taxes.

An account of the operation of the general property tax includes the consideration of the following topics: (1) Assessment; (2) Equalization; (3) Collection; (4) Delinquencies; (5) Exemptions.

I. *Assessment.* The administration of the general property tax begins with the placing of a valuation upon all property, real and personal. This official valuation is called an assessment. The officers of assessment, known as assessors, in some States are elected by the people; in other States they receive their office by appointment.

The assessors of a local division — of a city, or town, or township — after personally inspecting the property of the taxpayer and making a series of inquiries in reference to it, place a value upon it. This is done in respect to the property of every taxpayer. The sum of all the valuations of property thus made is the assessment of the local division. The tax rate of the local division is found by dividing the expenditures determined upon by the assessment. If the assessment is fifty million dollars, and the expenses of the local government are five hundred thousand dollars, the tax rate is one hundreth or one per cent. Every taxpayer, therefore, must pay local taxes

amounting to one per cent. of the assessed valuation of his property.

But this local division, even if it be a large city, most probably is located in a county [1] in which there are additional expenses of county government. The local division must bear its share of these expenses, and this will increase the rate of the taxpayer. The county rate is found by dividing the county expenditures by the county assessment, which is the sum of the assessments of all the local divisions of the county.[2] Again, the county as a part of the State must contribute its share to the support of the general State government. The State rate [3] is found by dividing the State expenditures by the State assessment (the sum of the county assessments). This rate added to the local and county rates gives the tax rate of the local taxpayer.

II. *Equalization.* In levying the general property tax the individual assessments must be just. If A's house is assessed at one thousand dollars, when it is worth two thousand dollars, and B's house is assessed at three thousand dollars when it is worth two thousand dollars, B will pay three times as much in taxes as A, whereas, in justice, he ought to pay only as much as A. In most of the States means are provided for correcting unfair assessments. Very often there is a local board of equalization to which taxpayers may appeal when they think they have not been treated fairly at the hands of the assessors. Sometimes such complaints are taken to an appeal tax court, or to the board of county commissioners. When the

[1] All cities in the United States excepting Baltimore, St. Louis, Washington, D. C., and some cities in Virginia, are located in counties.

[2] The valuation put upon property in the local assessment is usually regarded as its proper valuation for purposes of county and State taxation.

[3] In several States there is no general property tax for State purposes, the revenue for the general State government being obtained chiefly from corporation taxes and from licenses.

board of equalization or other body to which appeal is made finds that there has been an unjust assessment, it will order a new one made.

Frequently evils arise from uneven assessments among localities. For example, in one county the assessors may place the valuation of all property too low, while in another county the property may be assessed at its true value. As far as the county tax is concerned, undervaluation, if uniform as among the individuals of the county, works no harm, but it works harm in connection with the State tax, for the taxpayers of a county in which there is under-assessment contribute less than their just share to the State expenses. State boards of equalization have been established in many States to correct evils growing out of uneven assessments among localities. These State boards, however, have not in all cases been able to apply a remedy for wrongs occasioned by improper local assessments. Where all the local divisions in the State assess property according to the same principle, and assess it honestly, there is no trouble; but where original local assessments are made in a haphazard manner, or with a view to escape just burdens, the whole taxing system of the State is vitiated, and a remedy is almost impossible. The goodness or badness of the administration of the general property tax, therefore, depends upon the work of the local assessors.

III. *Collection.* The general property tax is gathered by local officers. Usually tax-collectors are elected or appointed for the sole purpose of collecting taxes, but in some States the collection is made by a constable or selectman, township supervisor, or other local officer. In the performance of his duties the collector is guided solely by the tax list prepared by the assessors. The same collector usually collects State, county and local taxes. When this is the case a distribution is made, the local division, the county and the State each receiving its proper share.

IV. *Delinquency.* When the taxpayer fails to pay his tax-bill promptly the property upon which the tax is levied is said to be delinquent, and is liable to be sold to satisfy the claim. If the property sold for taxes should bring more than the amount of the tax the excess is given to the owner. Moreover, the owner usually has the right to buy back his property at the price for which it is sold. This right of redemption, however, continues for only a limited period, usually two years.

V. *Exemption.* State constitutions almost always specify the kinds of property that may be exempt from taxation, and the legislature is usually forbidden to exempt any other kind. A clause from the constitution of Minnesota will illustrate the practice in reference to exemption: "Public burying grounds, public schoolhouses, public hospitals, academies, colleges, universities and all seminaries of learning, all churches, church property used for religious purposes, and houses of worship, institutions of purely public charity, public property used for public purposes, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall by general laws be exempt from taxation." Many States are careful to exempt household furniture to a certain value. Thus the constitution of Texas provides that two hundred and fifty dollars' worth of household and kitchen furniture shall be exempt from taxation.

150. Miscellaneous State Taxes. In the raising of revenues the State and the local governments are by no means confined to the general property tax. Large sums are realized from fees, licenses, and franchises. The opportunity for revenue in the way of licenses is seen in the following clause of one of the State constitutions: "The legislature shall have power to tax peddlers, auctioneers, brokers, bankers, commission merchants, showmen, jugglers, innkeepers, liquor dealers, . . . venders of pat-

ents, in such manner as it shall direct by general law, uniform as to the class upon which it operates." The franchise tax levied upon the franchises of railroads and other corporations is also proving to be a source of much revenue in some States. In many States a special corporation tax is levied on railroad, telephone and express companies.

Incomes are taxed in a few States; inheritances in many. Poll or capitation taxes are very common, and in some States yield considerable revenue. In cities large sums are collected as water rents, and special assessments for the payment (in whole or in part) for street improvements to abutting property. Water rents and special assessments, however, are not in the strict sense taxes; they are rather payments for social services which the government has chosen to perform. Fines also add materially to the public funds, but they can in no sense be regarded as taxes.

QUESTIONS ON THE TEXT

1. What restrictions are placed upon the power of the State to tax? By what authority are taxes levied for the support of the State government? for the support of local government?
2. What is the rule for levying the general property tax?
3. Explain the work of assessors. What is the assessment? How is the local tax rate determined? the county rate? the State rate?
4. What is the duty of the board of equalization?
5. What is done with delinquent property?
6. What kinds of property are exempt from taxation?
7. Name several kinds of taxes besides the general property tax which are accustomed to be levied in the State.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. "The power to tax is the power to destroy." Why would it not be wise for the federal government to have the power to tax the property of the State and the salaries of its officers?
2. What are the general provisions of the constitution of this State in reference to taxation? What restrictions are placed upon the taxing power of counties? of townships? of cities?
3. Does the right to vote in this State depend in any way upon

the payment of any kind of taxes? Ought it to so depend? Do all who pay taxes in this State have a right to vote?

4. Of the several kinds of taxes mentioned in the text, which are levied in this State?

5. Are mortgages taxed in this State? If so, who pays this tax? Are incomes taxed in this State? If so, who pays this tax?

6. What are the several kinds of property exempt from taxation in this State? (See the constitution.)

7. If you owed a man a just debt and saw an opportunity of escaping payment, would you avail yourself of the opportunity? If you owned property which should pay taxes and saw an opportunity to hide the property from the assessors and thus escape the payment of the tax, would you avail yourself of the opportunity?

8. If a man should send you a bill for three dollars when you knew you owned him five dollars, would you call his attention to the mistake? If the assessor should assess your house at $5,000 when it is worth $3,000 what would you do? If he should assess it at $3,000 when it is worth $5,000, what would you do? Do you believe men are disposed to deal as honestly with the government as they are with their neighbors?

9. What is the tax rate of this municipality (or township)? of this county? of this State?

10. Under what circumstances would there be no grumbling about taxes?

TOPICS FOR SPECIAL WORK

1. Taxation in the States. 19: 559–587.
2. State and Local Taxes. 15: 586–592.
3. State Supervision of Taxation. 17: 249–255.
4. The Corporation Tax. 1: 428–434.

XXXIII

PUBLIC DEBT

151. Public Debt a Necessity. A most important topic of public finance is *public debt*. The necessity of incurring debt in the conduct of public affairs is perhaps stronger than it is in the management of private business. Governments cannot accumulate money; they must confine taxation to such amounts as are necessary to meet expenses for the current year. At the end of the fiscal year the treasury is supposed to be virtually empty. This is unquestionably the correct policy. A government is sorely tempted to be extravagant when it has more money on hand than it needs. It has been said with some truth that the way to keep governments pure is to keep them poor.

Since it cannot save for a rainy day, when the rainy day comes, and large sums of money must be had at once, government must borrow. Increased taxation cannot be relied upon to supply the necessary revenue. In 1863 the federal government used its taxing power to the utmost to raise the money for the support of its war operations (p. 226), yet it could not collect by taxation one-sixth of what it spent during the year. More than five-sixths of its expenses had to be met by borrowing.

152. How Government Borrows Money. When a government wishes to raise money by borrowing, it usually sells its *bonds* to *voluntary* buyers. A government bond resembles a promissory note given to an individual who borrows money. In the bond are stated the amount owed by the government, the date of payment, and the rate of interest. A bond may be for a small sum or for many

thousands of dollars. The amount received by a government for a bond depends upon (1) the confidence which lenders have in the government's ability to redeem the bond, that is, to pay the debt, (2) the rate of interest offered, and (3) the length of time the debt is to run. Sometimes the conditions of borrowing are so favorable that government receives as much as one hundred and twenty dollars for a bond of one hundred dollars.

153. The National Debt. The Constitution gives to Congress unlimited power to borrow money (**46**); it imposes no restriction as to time, or amount, or security, or interest. Congress may not, however, pay any debt incurred in aid of rebellion against the United States (**157**). The debts contracted by the United States under the confederation were made valid as against the new government (**125**). Alexander Hamilton, the first Secretary of the Treasury, and the greatest financier perhaps in our history, wished to make the credit of the national government so good that no one would ever hesitate to lend it money. He urged Congress to pay not only the regularly contracted debt of the confederation (foreign, $12,000,000; domestic, $42,000,000), but also to assume the war debt ($21,000,000) incurred by the States during the War of the Revolution. After a long debate the policy of assumption was adopted, and the new government began its career with a debt of about $75,000,000.

Hamilton was inclined to regard a public debt as a source of strength to a government. By scattering the government's bonds among the people, he contended, you create an interest in its stability. Men will always rally to the support of a government which owes them money. Hamilton's financiering, therefore, did not tend to pay off the national debt as rapidly as possible. When his political rival, Jefferson, who was not deeply concerned about the strength of the central government, came into power, a policy of paying off the debt as fast as possible

was pursued, and its amount steadily fell until the War of 1812, when it rose to nearly $125,000,000. After the War of 1812 the policy of reducing the debt continued, and by 1836 the national debt was practically extinguished, and the treasury had on hand about $40,000,000 for which it had no use. The greater part of this surplus was actually distributed among the States according to population.

After 1836 the government began again to incur small debts, and during the Mexican War it borrowed considerable sums. At no time, however, did the debt become very large until the outbreak of the Civil War, when it jumped from less than $65,000,000 in 1860 to more than $500,000,000 in 1862. After 1862 the debt steadily mounted until 1866, when it approached $3,000,000,000. Since 1866 it has steadily declined, and the interest-bearing debt is now (1911) about $1,000,000,000, a sum which is less than one per cent. of the total wealth of the United States.

154. State Debt. A State must not assume a debt incurred in aid of insurrection or rebellion against the United States. (158). This is the only federal restriction upon the State as to its debts. The constitutions of most States, however, forbid the unlimited borrowing of money, although the restrictions do not extend to borrowing for purposes of public defense. To defend itself against invasion, or to suppress insurrections, the State may borrow to an unlimited extent, upon the principle that the public safety is above every other consideration. In most of the States a deficit can be met by borrowing, but the constitutions usually specify how large a deficit may be met in this way. In some of the States the amount that may be borrowed to cover a deficit must not exceed $50,000, in others it may be as large as $1,000,000. In the constitutions of a number of the States it is provided that money cannot be borrowed

unless the law authorizing the loan is first submitted to the people and their assent to it secured.

155. The Debts of Local Governments. Restrictions upon local governments in reference to borrowing are found in almost every State. If the restrictions do not appear in the constitution, they appear in the laws of the legislature or in the municipal charters. Most of the State constitutions fix the rate of indebtedness which the local government may incur. Frequently this rate is five per cent. of the total valuation of the property within the civil division which borrows the money. Sometimes before money can be borrowed by a local government the question must be referred to the people.

156. How Public Debts are Paid. Public debts of course must be paid by taxation. Indeed, they are often called *anticipatory* taxes, from the fact that government, in borrowing a sum of money, anticipates a certain revenue which it expects to receive by taxation. A State cannot be compelled by federal authority to pay a debt to a citizen, for, without the consent of the State a citizen cannot bring his suit into a federal court (**145**) and establish his claim. The United States cannot be compelled to pay a debt, for you cannot compel a sovereign power to do anything against its will.

It is customary in the United States for a government, national, State and local, to prepare for the payment of a debt at the time it is incurred, according to the doctrine of Hamilton, who held that the "creation of a debt ought to be accompanied with means of its extinguishment." This preparation usually consists in the creation of a *sinking fund.* Under the sinking fund plan the law which provides for the borrowing of money also provides for the raising by taxation of a certain sum annually which shall be set aside for the "sinking" or the paying of the bonds when they shall become due. The sum raised for the sink-

ing fund is inviolate and can be used for no other purpose, unless for public defense.

The United States may borrow money without creating at the same time a sinking fund for its payment, but the constitutions of many States provide that all debts, whether State or municipal, shall be accompanied by means of extinguishment, and the means adopted is usually the sinking fund arrangement.

QUESTIONS ON THE TEXT

1. How does the necessity of public debt originate?
2. Under what circumstances is the government justified in borrowing?
3. Describe a government bond. Upon what does the value of a government bond depend?
4. What are the provisions of the Constitution in respect to borrowing? What was Hamilton's doctrine concerning a public debt? What was Jefferson's policy in respect to the public debt?
5. Sketch the history of the debt of the United States.
6. What restriction upon the borrowing power of a State is in the federal Constitution? What restriction upon borrowing is usually found in a State constitution?
7. Why cannot the United States be compelled to pay its debt? Why cannot a State be compelled to pay its debt?
8. Explain the sinking fund arrangement.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Compare graphically[1] the *per capita* debt of the United States with that of each of the following countries: England, Germany, France, Italy, Russia, Austria.
2. If the term for which a bond is issued is long, how will that fact affect the price paid for it?
3. Is it right for this generation to contract public debts which must be paid by the next generation? Give reasons for your answer.
4. "Public debt is a public blessing." "Public debt is a public curse." Point out the truth and falsity which are contained in both the preceding statements.
5. How much per voter does the United States government owe?
6. What sum does this State owe? this county? this municipality? State the purposes for which these debts were contracted.
7. What provisions does the constitution of this State make in

[1] For example, let the per capita debt of the United States be represented by a square inch of surface and the per capita debts of the other countries by squares proportionally large.

reference to the debt of the State? to the debt of counties? to the debt of cities? What are the advantages and disadvantages of these provisions?

8. Did you ever see a bond that was issued by a government? If possible, bring a government bond to the class to be examined and studied.

9. Do rents in cities rise and fall with the tax rate? Ask a dealer in real estate about this.

10. Show how the tax rate may be kept low for a while by borrowing. What is the final result of such a system of financiering?

11. Is a large public debt necessary to make a government strong in the hour of its need? Answer this from our own history.

TOPICS FOR SPECIAL WORK

1. Forms of Public Debt. **17**: 293–310.
2. Funding Our National Indebtedness. **20**: 331–356.
3. Finances of Cities. **1**: 452–456.
4. Public Debts of State. **3**: Vol. I, 528.
5. Public Debts of Cities. **3**: Vol. I, 533, 640; also **11**: 173–175.

XXXIV

METALLIC CURRENCY

Introductory. Closely related to the financial function of government is the function of regulating the currency. Indeed, the subject of currency is regarded by many writers as only one of the divisions of the subject of public finance. The term *currency* includes all money, whether metallic or paper, which circulates at its face value. Mexican silver dollars are money, but they are not currency in the United States, for they do not circulate here unless at a discount. The currency of the United States consists at present of gold coin, certificates representing gold, silver dollars, certificates representing silver, subsidiary silver — coins of bronze and nickel, United States notes (greenbacks), and national bank notes. It will be the purpose of this chapter to give an account of that portion of our currency which consists of metal or certificates representing metal.

157. Coinage before 1873. During the colonial period there was but little coining of money in America. In 1652 Massachusetts established a mint at which shillings and sixpences continued to be coined for a period of thirty-four years. This seems to be the only notable instance of coinage in America before the Revolution. Under the "Articles of Confederation" Congress had the power to coin money, but unfortunately it did not have the bullion (uncoined gold and silver) to coin. The little money which was coined during the period of the Confederation was struck off by private parties under the authority of the individual States. The framers of the Constitution took

the right of coinage away from the States (72) and lodged the power entirely with the federal government (49). The experience of the Americans with paper money previous to the formation of the Constitution had been very unsatisfactory. So the new government which was organized in 1789 was strongly inclined to a metallic currency. In 1792, Congress when establishing a mint, enacted a coinage law providing:

"That it shall be lawful for any person or persons to bring to the said mint gold or silver bullion in order to their being coined . . . free of expense to the person or persons by whom the same shall have been brought. And as soon as the said bullion shall have been coined the person or persons by whom the same shall have been delivered, shall upon demand receive in lieu thereof coins of the same species of bullion which shall have been so delivered, weight for weight, of pure gold or silver therein contained.

"That all gold and silver coins which shall have been struck (stamped) and issued from said mint shall be a *lawful tender* in all payments whatsoever."

The relation which was to exist between the value of gold and that of silver was stated in these words: "Every fifteen pounds weight of pure silver shall be equal value in all payments with one pound of pure gold." The law of 1792 thus provided for *free coinage* of gold and silver at the ratio of fifteen to one. A dollar of gold contained 24.75 grains of pure metal, and a dollar of silver 371.25 (15 x 24.75) grains.

The mint continued to coin the precious metals at the ratio of fifteen to one until the year 1834, when it was found that fifteen pounds of silver was not worth one pound of gold. About this time one pound of gold in foreign markets was worth nearly sixteen pounds of silver. The holders of gold, therefore, were not willing to pay it out in the United States, where it was worth but fifteen

pounds of silver, just as farmers would not be willing to exchange a bushel of wheat for seventy-five cents in the home market when they could get eighty cents elsewhere. As a result of the overvaluation of silver (or the undervaluation of gold) there came into operation a monetary principle which is known as "Gresham's Law," and which is usually stated as follows: "Bad money tends to drive out good money, but good money cannot drive out bad." This law does not mean that either silver or gold is of itself either good or bad. It means that people will pay their debts and purchase articles with the cheapest money available, and that they will either hoard or send abroad the dearer money. Under the law in force before 1834 silver was driving gold from circulation, because everybody who could do so was holding back his gold and paying his debts and making his purchases in silver.

In order to bring gold back into circulation, Congress in 1834 reduced the weight of the gold dollar to 23.22 grains of pure metal, allowing the silver dollar to remain 371.25 grains. The ratio thus established was (nearly) sixteen to one — a ratio at which the two metals have ever since been coined. Under this law the free coinage of both metals continued as before.

It was soon found that the new ratio of sixteen to one overvalued gold, and "Gresham's Law" again came into operation. This time, since gold was the cheaper money, silver was driven from circulation. In 1850 a silver dollar was worth $1.02 in gold, and after the discovery of gold in California the relative value of silver was still higher. As a consequence, between 1837 and 1873 but little silver, except in the form of subsidiary coins was coined.

158. Coinage since 1873. In 1873 — an important date in our monetary history — Congress discontinued the free coinage of silver, and established as the unit of value the gold dollar of the weight of 23.22 grains of fine gold with

one-tenth of alloy to prevent abrasion. In the same year Germany withdrew large quantities of silver from circulation, and in the following year several other European countries began to restrict the coinage of silver. About this time immense deposits of silver were discovered in Nevada, and cheaper methods of extracting the metal from the ore were invented. The production of silver increased, and the demand for it at mints decreased. The result was that in the years following 1873 there was a marked decline in the value of silver as compared with gold.

The unpopularity of the demonetization of silver (i. e., the refusal of the government to coin the metal into money) caused Congress in 1878 to pass the " Bland-Allison Act," which provided " that the government should buy not less than two million dollars' worth, and not more than four million dollars' worth of silver bullion each month, and coin it into silver dollars, these to be full legal tender." Under this act a great deal of silver was coined, but there was not unlimited free coinage as there had been prior to 1873. The law of 1878 continued in force for twelve years, and under its workings $378,166,793 in silver was coined. Of this sum $57,000,000 entered circulation as metallic silver dollars. The remainder was deposited in the vaults of the treasury and *silver certificates* (representative money) were issued against it.

In 1890 the " Bland-Allison Act " was repealed and the law known as the " Sherman Act " was passed. This law provided that the Secretary of the Treasury should purchase at its market value 4,500,000 ounces of silver each month and pay for the same with *treasury notes*. Under this law 168,000,000 ounces of silver were bought, 36,000,000 silver dollars coined and $156,000,000 of treasury notes issued. These treasury notes of 1890 were legal tender and could be presented by the holder to the Secretary of the Treasury and be redeemed either in silver or gold at the discretion of that officer.

In 1893 the government of India demonetized silver, an act which lowered the price of silver all over the world. In the same year the gold reserve — a sum of $100,000,000 which the government kept on hand to redeem the treasury notes and the greenbacks (p. 256) with — began to diminish day by day. These and other discouraging facts produced the impression that the Secretary of the Treasury would not long be able to redeem the treasury notes and greenbacks in gold, and the holders of these kinds of currency, becoming alarmed, presented them in large sums for redemption, always demanding gold. The treasury faithfully redeemed in gold, but the fear that the reserve would be exhausted and that silver, a dollar of which was worth only sixty-seven cents, would be the only money available for redemption purposes, led to a panic in the financial world, and this led to the repeal of the *purchasing clause* of the "Sherman Act," and thus the issue of treasury notes ceased.

Since 1893 coinage has been on a gold basis. No silver bullion has been purchased at the mints since that date, although a considerable portion of that which was bought under the Sherman Act has been coined as Congress has from time to time directed. Under a law of 1900 gold was made the standard unit of value and no provision was made for the coinage of silver [1] other than that which was already in stock. Silver dollars and silver certificates, however, are still legal tender, and it is the declared policy of the government to keep them on a parity with gold; that is to say, when silver certificates are presented to the treasury for redemption it is the policy of the government to redeem them in gold at their face value, and if silver dollars are presented for exchange they will be exchanged for gold, dollar for dollar. The coinage of gold is free.

[1] The government still purchases silver for subsidiary coinage and for coins used in the Philippine Islands.

159. Subsidiary Coinage. The account of the coinage which has been given has referred to coins of a denomination of one dollar and upwards. Silver coins of a denomination of less than a dollar have been issued ever since the establishment of the mint. These are known as *subsidiary coins* or fractional currency, and consist of the familiar half-dollar, quarter-dollar and dime. These are legal tender to the amount of ten dollars. In the half-dollar there are 173.61 grains of pure metal, and proportional weights in the quarter-dollar and dime. Below the subsidiary silver are the minor coins of base metal, the five, three and one-cent piece, which are legal tender to the amount of twenty-five cents.

QUESTIONS ON THE TEXT

1. What is meant by the term "currency"? Illustrate.
2. State the provisions of the coinage law of 1792. What do you understand by the *free coinage* of a metal?
3. Explain "Gresham's Law." Illustrate its workings in our monetary history.
4. What led to the depreciation of silver after 1873?
5. What were the provisions of the "Bland-Allison Act"?
6. What were the provisions of the "Sherman Act"?
7. What circumstances led to the repeal of the "Sherman Act"?
8. What is the law at present in respect to coinage?
9. What are the subsidiary coins? What is the number of grains of silver in a quarter? in a dime?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *Bimetallism and Monometallism.* The demonetization of silver has been the cause of fierce political controversy. Many people called bimetallists believe that the United States should permit free and unlimited coinage of both gold and silver at a ratio fixed by law. It is contended by the bimetallists:

(1) That there is not enough gold produced in the world to supply the requirements of business.

(2) That a double standard prevents prices from fluctuating; that when one metal begins to be scarce and its purchasing power begins to rise the other metal will take its place and restore prices to a level.

(3) That the low price of silver is due to legislation; that if

the free coinage of silver should begin again its price would rise.

(4) That under gold monometallism there has been a general fall of prices, and that this fall has imposed unjust burdens upon the debtor classes.

The monometallists, or those who believe in the single gold standard, reply:

(1) That the supply of gold is increasing fully as rapidly as the demands of trade.

(2) That bimetallism is impossible; that even if you coin the two metals, one of them will always be the standard, and that one the cheaper; that Gresham's Law is unalterable.

(3) That legislation cannot regulate the price of silver or of any other commodity; that silver is cheap because the supply is large and the demand small.

(4) That the fall in prices is due not to the scarcity of money, but to the improvements in methods of production; furthermore, that in making contracts we are bound to incur risks, and that sometimes the debtor class profits by the change in price and sometimes the creditor class profits thereby.

2. The law of 1792 quoted in the lesson says: "Every 15 lbs. weight of pure silver shall have equal value in all payments with one lb. of pure gold." Why 15 to 1? Why not 10 to 1, or 20 to 1?

3. If a government should open its mints to the free coinage of silver and copper, what ratio would be established between the two metals? (Use the market quotations found in the newspaper.)

4. If under the bimetallic scheme suggested in 2 the copper-mines should be suddenly exhausted, how would "Gresham's Law" operate?

5. What was the "crime of '73"?

6. How many grains of silver in a silver half-dollar? Are two silver half-dollars worth one silver dollar? Do they contain as much silver as a silver dollar?

7. If you are worth your weight in gold how many dollars are you worth?

8. Which do you see more frequently — gold or silver certificates? What was the smallest amount for which you ever saw a gold certificate? the largest amount? What was the smallest amount for which you ever saw a silver certificate? the largest amount?

9. How many grains of gold is the silver in a silver dollar worth? (See market price of silver.) Why is it that a silver dollar readily exchanges for a gold dollar?

10. Is the amount of gold produced annually increasing or decreasing? Does this fact favor the monometallist or the bimetallist? What facts favor the position of the monometallist? What facts favor the position of the bimetallist?

11. Procure, if possible, a gold certificate, a silver certificate and a treasury note of 1890[2] and bring them to class for the purpose of

[2] Under the currency law of 1900 treasury notes are being with-

study. According to the language on its face what metal would you get for the gold certificate if you should present it at the treasury for redemption? What metal would you get for the silver certificate? Suppose you knew you could get gold for your treasury note if you asked for gold, would you regard it as good as a gold certificate? Suppose you understood that the government's supply of gold for redemption purposes was running low, what would you be inclined to do with your treasury note? Suppose you should burn your gold certificate, would the government gain or lose?

TOPICS FOR SPECIAL WORK

1. The Relation of the United States Treasury to General Finance. **1**: 464–469.
2. Money as a Tool in Exchange. **18**: 98–107.
3. Development of Metallic Money. **19**: 224–433.
4. Bimetallism. **19**: 303–313.
5. The Demonetization of Silver. **20**: 403–413.

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drawn from circulation and silver certificates are being issued in their place. It may be difficult, therefore, to procure a treasury note.

XXXV

PAPER CURRENCY

160. Bank Notes and Government Notes. In addition to the metallic currency described in the last chapter we have in circulation a large volume of paper currency. This consists of *bank notes* and *United States notes.* A bank note is a promissory note, payable on demand, made and issued by a bank and intended to circulate as money. Whether a bank note will circulate as money or not ordinarily depends upon the reputation of the bank and upon its ability to pay the note when presented for payment. If those persons to whom the note is offered have no faith in the bank's promise they will not receive the note, and its circulation is thereby made impossible. A United States note (greenback) is a form of paper money issued by the federal government and based upon the credit and good faith of the country. It is a legal tender for all debts public and private.

161. The United States Banks. The financial plans of Hamilton included the organization of a bank in which the new federal government should have a direct interest. Such a bank, he claimed, would make it easier for the government to obtain loans, would make it more convenient for the individual to pay his taxes to the government, and would furnish a safe depository for the government's funds. But could the federal government, under the Constitution, establish banks? Hamilton contended that it could, claiming authority under the "elastic clause." Madison contended that the scheme for a government bank was "condemned by the silence of the Constitution; was

condemned by the rules of interpretation arising out of the Constitution; was condemned by its tendency to destroy the main characteristics of the Constitution."[1] Jefferson also bitterly opposed the bank scheme, but Hamilton was victorious in Congress and in 1791 the first Bank of the United States was chartered for a period of twenty years. Its capital was $10,000,000, of which sum the government subscribed $2,000,000 becoming thereby an active partner in the banking business. The notes issued by the bank were receivable in payment for all debts due to the United States. The bank was prosperous, but when its charter expired in 1811 its enemies were too strong for it and it failed to secure a renewal of its charter.

In 1817 Congress, recognizing the assistance which a government bank might give in financing the war debt of 1812, chartered the second Bank of the United States for a term of twenty years, contributing one-fifth of the $35,000,000 of capital. Andrew Jackson opposed this bank with all his might and succeeded in preventing a renewal of its charter, which expired in 1837. The notes of this bank, like those of the first, were redeemable in coin and were a legal tender for all debts due to the government. The charter permitted a circulation of $35,000,000 in notes, but the largest amount issued was $25,000,000. The notes of this second bank did not always pass at their face value, but in the end they were all redeemed and removed from circulation. Since 1837 the federal government has not been interested as a partner in any bank.

162. State Banks. The real enemies of the Bank of the United States were the banks which were chartered by State authority. There were three of these in existence at the time of the establishment of the government, and in 1837, when the Bank of the United States was crushed, there were nearly eight hundred. The State banks issued

[1] In 1820 the Supreme Court of the United States decided that the federal government has the right to establish banks.

bank notes, but these could not be legal tender, the Constitution providing that no State can make anything but gold and silver a legal tender (**72**). The notes of the State banks were like the promissory notes of an individual, one could accept them or not as one pleased. After the downfall of the Bank of the United States in 1837 a very large part of the currency of the country consisted of the notes of the State banks. In some States the banks were kept under strict control and were compelled to keep on hand sufficient specie — gold and silver — with which to redeem their notes, but in a number of States there were no such safeguards and "wild-cat" banks issued notes regardless of their ability to redeem them. The outstanding notes of State banks in 1860 amounted to over $200,000,000.

In 1865 Congress passed a law imposing a tax of ten per cent. on the circulation of State banks. The purpose of this tax was to strengthen the new national bank system (see below) by driving the notes of the State banks out of circulation. The law succeeded in its purpose. "The power to tax is the power to destroy." State banks redeemed and cancelled their outstanding notes and ceased to issue new ones. We still have State banks,[2] but they do not issue bank notes, because they cannot afford to pay the tax.

163. National Banks. The Civil War was not far advanced before it was plain that the State banks could not meet the financial demands of the hour. In 1861 the New York banks *suspended* — ceased to redeem their notes in specie — and the national government could no longer borrow gold from them. Accordingly, in 1863 Congress created a system of *national banks,* which became the basis of our banking system as it exists at present. The national banking law of 1863 has been modified from time to time, but its essential features have remained unchanged.

[2] It is estimated that there are about 7000 private and State banks in the United States.

Our national banking system as it is to-day may be described as follows:

(1) National banks with a capital of $25,000 may be organized in towns of less than 3000 inhabitants; in towns of more than 3000 and less than 6000 inhabitants the capital must be $50,000; in places of more than 6000 and less than 50,000 inhabitants it must be $100,000; in places of more than 50,000 it must be $200,000.

(2) The organizers of a bank (not less than five in number) must purchase United States bonds equal in amount to at least one-fourth of the capital of the bank and deposit these bonds with the comptroller of the currency at Washington. The bank remains the owner of these bonds and receives interest from them.

(3) The bank receives from the comptroller *national bank notes* equal in amount to the par value of the bonds deposited. These bank notes are not legal tender; they are promises to pay — like the old notes of the State banks; like any bank note, in fact.

(4) The bank notes are secured by the bonds in the possession of the Treasurer of the United States. If a bank should fail in business and be unable to redeem its notes in legal tender money, the comptroller will sell the bonds and get the money with which to redeem the notes. A bank note is thus as good as a government bond, as good as the government itself. Banks frequently fail, but the holders of their notes have never lost a dollar by reason of the failure.[8]

164. United States Notes. We come now to the paper currency issued by the government. During the Civil War the federal government issued large quantities of inconvertible paper money, making the same a legal tender. The notes thus issued are officially known as *United States notes,* but they are popularly called *greenbacks,* a name

[8] Under the national banking laws more than 7000 banks have organized with a total issue of about $800,000,000 in bank notes.

given to them on account of the green color of their backs. These greenbacks have played an important part in our financial and political history during the past fifty years.

In all $449,000,000 in greenbacks was issued. When the war was over the government began to destroy them when they came into the treasury, just as one destroys a promissory note when it is paid. The policy of *retirement* (destruction) of the greenbacks continued until 1868, when the people demanded that the retirement should cease; they said the greenbacks were needed in business. Congress obeyed the demand and ceased to retire the greenbacks.

Now that the greenbacks were to remain in circulation, it was necessary to make them as good as gold. So Congress, in 1875, passed the Redemption Act, which provided that after January 1st, 1879, the Secretary of the Treasury should resume specie payments, or, in other words, should redeem greenbacks in gold, dollar for dollar, whenever they should be presented at the Treasury for redemption. To enable him to do this, he was permitted to sell bonds for gold and keep this gold in the Treasury as a reserve set apart especially for redemption purposes. The result was that the greenbacks began to circulate at par. When redemption day arrived the Secretary had on hand more than $100,000,000 of gold, but no greenbacks were presented. The knowledge that they were as good as gold satisfied everybody and no gold was demanded.

What was to be done with the greenbacks after they were redeemed? Congress in 1878 answered this question by providing that when a greenback was redeemed in specie it "should not be retired, cancelled or destroyed, but should be re-issued and paid out again and kept in circulation." The greenbacks in circulation at this time amounted to $346,000,000, and this amount has never been materially decreased.

Under the Sherman Act of 1890 (p. 247) the treasury notes as well as the greenbacks could be presented for redemption. In 1893 there were $150,000,000 of these notes, and the sum was increasing. Here was $500,000,000 of paper money, greenbacks and treasury notes together, and only $100,000,000 of gold with which to redeem it. As we have seen (p. 248), this condition of affairs alarmed the financial world and there was a rush to the treasury with greenbacks and treasury notes. The reserve fell rapidly, and the Secretary (in 1894–1895) was compelled to sell bonds (borrow money) to the amount of $262,000,000, in order to keep the gold reserve at the $100,000,000 mark. Under the currency law of 1900 the gold reserve must be $150,000,000, and United States notes are redeemable at the treasury in gold.

165. The Essential Facts of our Monetary System. We are now prepared to understand the following summary of our monetary system:

(1) The federal government has complete control of all currency issues whether metallic or paper and may issue legal tender paper money as well as gold and silver currency.

(2) The gold dollar of 23.22 grains is the unit of monetary value, and the coinage of gold is free. The amount of gold coined from year to year is wholly a matter of private initiative. Government does not regulate it. The amount is regulated by supply and demand — the supply of gold bullion and the demand for gold coin.

(3) Silver dollars and silver certificates, the treasury notes of 1890, and United States notes (greenbacks) are exchangeable for gold at their face value upon presentation at the treasury of the United States.

(4) This redemption is made possible by the reserve fund of $150,000,000 in gold which the government keeps in its vaults.

(5) The paper money, when redeemed with gold, is again used by the government in the payment of its debts, and thus again finds its way into circulation.

(6) The volume of money in circulation is increased by the coinage of gold at the mints and by the notes issued by banks, and, in times of great financial stringency by the banking associations established by the Aldrich Law. (See note on *Emergency Currency* below.)

(7) Bank notes are as good as gold because the government bonds, and other approved bonds which secure them are as good as gold.

QUESTIONS ON THE TEXT

1. What is a bank note? a government note?
2. For what purposes did Hamilton establish a government bank? Give an account of the first and second banks of the United States.
3. Give an account of State banks prior to the Civil War.
4. In what matters did the State banks fail to meet the financial needs of the government during the Civil War?
5. Describe the present national bank system.
6. Give an account of the paper money issued during the Civil War.
7. Give an account of the resumption of specie payments.
8. What are the essential features of our monetary system?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *The Independent Treasury.* While the first and second banks of the United States were in existence, the funds of the federal government were deposited in these institutions. After the second United States bank lost its charter, it became necessary to provide safe depositories for the federal revenues. Accordingly, in 1840, the independent treasury system was established. Under this system the federal government keeps its monies in its own depositories, in the Treasury at Washington, and in nine sub-treasuries. The sub-treasuries are located at Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis, and San Francisco.

2. *The Redemption of the Greenbacks.* Why have not the greenbacks been retired as they have been redeemed? The friends of the greenbacks answer that to retire them would contract the currency, would take nearly $350,000,000 out of circulation and would make money scarcer, and thus lower prices; that we need *more* money, not *less* money. The enemies of the greenbacks say that they ought to have been retired long ago, and that under a sound system of

financiering they would have been retired; that they have already cost more than their face value, and that they will be a source of danger as long as they exist.

3. If you had $100 in a bank and owed a man living at a distance $26.87, how would you be likely to pay the debt? Is a bank check currency? Does it take the place of currency? A, B, and C meet. A owes B $5, B owes C $5, and C owes A $5. A draws a check for $5 and pays B; B pays C with the check; C pays A with the check. After the transaction is finished and each has a receipt A remembers that he had no money in the bank. Can a debt be paid without money?

4. Draw a promissory note. Compare the language of the note with that found on a national bank note. Under what conditions would you accept the promissory note in payment of a debt? How is a bank note secured?

5. Study what is printed on a bank note and answer the following questions: Is it legal tender for all debts? What is the penalty for counterfeiting it? When and where was it issued? Where was it printed?

6. Suppose a bank note which you hold should be destroyed, would the bank gain by reason of the accident?

7. Study what is printed on a United States note and answer the following questions: In what year did Congress authorize it to be issued? Is it a legal tender? What is the punishment for counterfeiting it? It says: "will pay the bearer five dollars": What did these words mean at the time the note was issued? What do they mean now?

8. How much currency *per capita* is in circulation in the United States? How much per voter?

9. How is the volume of currency increased as more is needed?

10. *The Amounts of the Several Kinds of Currency.* The following table prepared by the comptroller of the treasury shows the general stock of money in the United States July 1, 1911:

Gold	$1,753,448,215
Silver	564,991,508
Subsidiary silver	159,201,448
Treasury notes of 1890	3,286,000
United States notes	346,681,016
National bank notes	728,478,611
Total	$3,556,086,198

11. *Emergency Currency.* The Aldrich Law passed in 1908 provides for an emergency currency to be issued in time of panic or extraordinary financial depression. This law authorizes the organization of banking associations throughout the country and permits these associations to deposit with the Treasurer of the United States, State, municipal, and county bonds, and receive therefor bank notes amounting to ninety per cent. of the value of the bonds deposited.

The emergency money issued in this way must not exceed $500,000,000 at any particular time. In order that it may be driven out of circulation as soon as the panic has passed, the emergency currency is taxed at the rate of five per cent. per annum for the first month, six per cent. per annum for the second month, and so on, the tax increasing month by month until it amounts to ten per cent. per annum. The Aldrich Law expires in June, 1914.

TOPICS FOR SPECIAL WORK

1. The National Banks and the Panic of 1907. 1: 469–475.
2. The Independent Treasury *vs.* the Central Bank. 1: 475–482.
3. Government Paper Money. 19: 263–269.
4. Greenbacks and Resumption. 26: 359–378.

XXXVI

COMMERCE

Introductory. Commerce is the exchange of goods, merchandise, or property of any kind. All governments find it necessary to regulate commerce. In the United States power in respect to commerce is divided between the State and the federal government. Foreign commerce, interstate commerce and commerce with Indian tribes (47) are regulated by Congress, while the regulation of commerce carried on wholly within the boundaries of a State is the function of the State government. The subject of the regulation of commerce, therefore, may be treated appropriately under three heads: (1) Foreign Commerce, (2) Interstate Commerce and (3) Intrastate Commerce.

166. Foreign Commerce:

I. *The Power of Congress over Foreign Commerce.* Under the Confederation commerce with foreign nations was in a confused and disordered condition. Each State had its own custom-house and levied such duties on imports as it deemed expedient. There was no uniformity in the customs rates and the commercial warfare between the several ports along the coast was destructive. To remedy these evils the Convention of 1787 placed the regulation of foreign commerce wholly in the hands of the national government. Of course it was asking a great deal of a port like New York to pay its custom-house receipts into the national treasury (75), yet patriotism in the Convention prevailed, and the States gave up their power to collect customs duties (74).

The power of Congress over foreign commerce is limited

in only two particulars: (1) It must deal fairly with all the ports of the country, and not give one port a preference over another (**68**); and (2) it must not lay any tax or duty on articles exported from any State (**67**).

The power of government to regulate commerce is construed very broadly and extends not only to the goods exchanged and to the agencies of transportation, but to the movement of persons as well. Congress, therefore, in the exercise of its constitutional power can do much to influence the character of our foreign commerce and to shape its course. Indeed, Congress can prohibit foreign commerce altogether, as was illustrated by the non-importation act of 1806, and by the embargo act of 1807. Under the non-importation act foreign goods could not be brought into the country, and under the embargo act vessels could not leave the harbors of the United States.

II. *The Tariff; Free Trade and Protection.* From the beginning of our national history to the present time two distinct policies have been advanced in reference to foreign goods: (1) the free-trade policy and (2) the policy of protection. The adherents of the free-trade policy, regarding free commercial intercourse between nations as a good thing in itself, contend that taxes on foreign goods should be levied, not with the view of keeping the goods out of the country, but with the view of raising the necessary revenue, and with that view only. The adherents of the protective policy, desiring to protect home producers from competition with foreign goods, would levy the customs, not so much with the view of raising revenue, as with the view of at least discouraging importations.

The essence of the free-trade argument is that, under normal conditions of production and competition, a country will satisfy its needs with the least possible effort. Those things that can be produced with the greatest economy at home will be so produced, and any surplus will be exchanged abroad for what other nations can produce with

less of effort. Commerce between two countries, each of which produces according to its natural resources, is always profitable to both countries, the free-traders contend, for each country exchanges that which it wants less for that which it wants more.

The argument of the protectionist is that by imposing high import duties upon certain classes of goods and thereby partly or wholly keeping them out of the country you encourage the production of those goods at home, and this encouragement results in new occupations and in a diversified industry at home. The additional producers thus called into being by the protective tariff are also consumers, and they buy at least a part of the country's surplus. Another argument for protection is based upon the difference in the standards of comfort and rates of wages in different countries. If there were no tariff hindrances the lower standard and the lower wage would be given the advantage in competition and workmen would suffer as a result.

The tariff has always been an important issue in American politics, and our tariff policy has been a fluctuating

Articles	Value	Duties collected	Ad-valorem rate
Sugar	$101,435,108.04	$ 57,024,675.34	56%
Wool and woolen goods	70,736,936.98	41,900,692.95	59%
Cotton manufactures	67,938,880.18	38,076,761.07	56%
Fibers and goods made of fibers	61,440,741.37	22,427,670.18	36%
Iron and steel manufactures	37,548,287.71	12,375,245.99	33%
Silk manufactures	33,083,666.91	17,675,021.40	53%
Tobacco manufactures	30,481,468.84	24,124,339.21	79%
Chemicals, drugs and dyes	30,934,400.55	7,346,884.01	23%
Spirits, wines and liquors	23,896,157.83	17,572,334.56	74%
Fruits and nuts	21,223,009.68	8,438,755.54	40%
Lumber	23,768,077.11	2,070,641.13	9%
All other dutiable articles	283,828,502.12	77,305,584.08	27%
Total dutiable	$786,315,237.32	$326,238,605.46	41%

one. The protective principle usually prevails in most of our tariff legislation, although it is exceedingly difficult to frame a tariff law that is satisfactory to all sections. The operation of the present tariff — the Payne tariff of 1909 — may be fairly well learned by the table on page 263, which shows the customs revenue for the fiscal year 1910.

III. *Regulations of Foreign Shipping.* In its regulations affecting vessels engaged in foreign trade Congress has always aimed to protect and promote American shipping interests. Only vessels built within the United States and wholly belonging to citizens thereof can be registered as American, unless by a special act of Congress. Moreover, unless a vessel is officered by Americans it cannot fly the American flag. Vessels engaged in foreign commerce must as a rule pay into the federal treasury an annual tonnage tax — a tax on the carrying capacity estimated in tons — but this tax is made to fall more heavily on foreign vessels than on those registered as American. Foreign vessels cannot engage in the coasting trade, or in trade between the United States and its insular possessions.

IV. *The Regulation of Immigration.* Since passengers as well as goods are included in the term commerce, immigration is regulated by Congress. During the greater part of our history we encouraged immigration, for in the development of our country we needed all the brain and muscle we could get. Had it not been for the millions of immigrants who have come to us from England, Ireland, Scotland, Germany, Russia, Norway, Sweden, France, Italy, a large part of our country would still be a wilderness.

About 1880 Americans began to feel that immigration on a large scale was no longer desirable, and demanded that restraints be placed upon the admission of foreigners. First the Chinese were excluded. In 1882 Congress, in defiance of a treaty with China, prohibited Chinese laborers from coming into the United States, and but few of these people have entered since the exclusion law

was passed. In the same year Congress ordered that the character of all immigrants be looked into and commanded that convicts, lunatics, idiots and other persons not able to take care of themselves should not be admitted into the United States, but should be sent back at the expense of the owners of the vessels upon which they came. By a law of 1885 it is made unlawful for certain classes of laborers to enter the United States, if they have previously entered into a contract to perform labor here, and any person brought here under a contract to perform labor can be sent back at the expense of the vessel which brings him here. As a further hindrance to immigration the tax imposed on immigrants has been increased from fifty cents per head to four dollars per head. These restrictive laws have had the effect of checking immigration to some extent, but they have by no means solved the immigration problem: they have by no means been successful in keeping out all undesirable foreigners and letting in only those whose presence is beneficial.

167. Interstate Commerce:

I. *Interstate Commerce Defined.* Domestic commerce is that which is carried on within the United States, and consists of interstate commerce and intrastate commerce. It is not easy to draw clearly the line which separates interstate from intrastate commerce. Broadly speaking, when a commercial transaction begins in one State and ends in another, that transaction is a subject of interstate commerce, but when a commercial transaction begins and ends in the same State it is a subject of intrastate commerce. When a merchant ships his goods to a point within a State he engages in intrastate commerce; when he ships them to a point outside of the State he is engaged in interstate commerce. A railroad which has its termini and the whole length of its tracks within the State cannot be regarded as being engaged in interstate commerce, but a railroad which has its termini in different States

must be so regarded. A river lying wholly within a State and having no connection with bodies of water extending beyond the boundaries of the State — a thing which rarely ever occurs — is an instrument of intrastate commerce, but a river wholly within a State connecting with navigable waters that extend beyond the boundaries of the State is regarded as an instrument of interstate commerce. Does a certain commercial act or a certain instrument of commerce, a river, a canal, a railroad, concern one State or more than one? If it concerns one State only it is an affair of intrastate commerce; if it concerns more than one State it is an affair of interstate commerce.

II. *The Regulation of Interstate Commerce.* The men of the convention treated the whole subject of commerce with a firm hand. They gave to Congress complete power to regulate commerce between the States (**47**). They forbade a State to lay tonnage (**76**) or any export or import duty without the consent of Congress (**74**). Within its borders a State can regulate its commerce in its own way, but goods and passengers that are on their way from one State to another are placed under the regulation of the federal government.

The power of Congress over interstate commerce is comprehensive and far-reaching. It extends to the instruments of commerce,— to canals and vessels and railways and telegraph lines, and to the persons engaged in it, as well as to the articles of commerce themselves. Under the provisions of the interstate commerce clause a State is not permitted to discriminate by taxation or otherwise against residents of other States, or against business carried on by them in the State.

III. *The Interstate Commerce Commission.* The most important agency for regulating interstate commerce is the Interstate Commerce Commission (p. 114), which was established by Congress in 1887. The law which created this commission requires that freight and passenger rates

shall be just and reasonable, that there shall be no discrimination between persons and localities; it provides that there shall be proper facilities for the interchange of traffic between connecting lines; it forbids the issuance of free interstate passes; it requires that railroads print and make public their freight and passenger rates. A supplemental law (the Elkins law, passed in 1903) forbids rebates and provides that rates lower than those published shall not be charged. It is the duty of the Interstate Commerce Commission to carry these provisions into effect.

In 1906 Congress gave the Commission, upon the complaint of an interstate shipper (or passenger), the power to do away with a rate which it regards as unjust or unreasonable, and to fix a new rate which it regards as just and reasonable. In 1910 Congress went a step further and empowered the Commission to make investigations of its own motion, and when it finds certain rates unreasonable and unjust, to change them, even though there has been no complaint whatever. Moreover, by the law of 1910 new rates may be suspended in their operation by the order of the Commission, and if upon investigation they are found by that body to be unjust and unreasonable they cannot go into operation at all. The railroads, however, may appeal to the Court of Commerce (p. 125) where the decisions of the Commission may be overruled. The control which the Interstate Commerce Commission exercises over railroad rates makes it an agency of vast importance and power.

168. Intrastate Commerce. The power of the State over commerce which concerns only the people within its borders is unlimited. It is the custom of all the States to permit great freedom in commercial transactions and to foster the growth of commerce. For the encouragement of commerce the State, or the locality acting for it, maintains highways, improves rivers and harbors,[1] constructs canals,

[1] The improvement of rivers and harbors is a function of the federal government also, and Congress habitually appropriates large sums for this purpose.

and in rare instances builds and operates railroads. The great Erie Canal owned and operated by the State of New York is the most remarkable instance of State canal building, although many other States, notably Ohio, Indiana, Illinois and Michigan, have aided their commerce by constructing canals.

The most important factor of commerce is transportation, and transportation for the most part begins upon a common highway, upon a paved street or upon a country road. The construction of roads and streets and bridges is almost everywhere a function of the local government, the township or county or municipality. In many States the local authorities are assisted by the State government in the work of road building. In such states, roads are constructed in part at least under the supervision of State road commissioners, and the cost is apportioned to the State and to the locality.

Next to the highways, steam railroads and electric-car lines are the most important instruments of State commerce. Railroads ordinarily receive their charters from the State, although several transcontinental lines have been chartered by Congress. Sometimes the State not only charters the railroad, but also assists with money in its construction. As a rule, however, the States have kept out of the railroad business, and have allowed the railroads to be constructed by private enterprise. Nevertheless, railroads demand a large share of attention upon the part of the State, and in two-thirds of the States there are State railroad commissions. These State railroad commissions perform for intrastate commerce services similar to those performed for interstate commerce by the Interstate Commerce Commission: they see that the railroads do not favor one locality or one individual at the expense of another, that they publish their rates, and that they conform generally to the constitution and the laws of the

State. In several States the railroad commission regulates the rates charged by railroads in intrastate commerce.

QUESTIONS ON THE TEXT

1. How is power in respect to commerce divided?
2. What is the extent of the power which Congress has over foreign commerce?
3. What is meant by free trade? by protection? Give the leading argument for free trade; for protection.
4. What has been the general policy of this country in respect to the tariff? Explain the operations of the present tariff.
5. What regulation has Congress made in respect to foreign shipping?
6. Give an account of our immigration policy.
7. Distinguish between interstate and intrastate commerce.
8. What are the powers of Congress in reference to interstate commerce?
9. Give an account of the powers and duties of the Interstate Commerce Commission.
10. What are the powers of the State in respect to intrastate commerce?
11. To what government is the construction of roads usually assigned?
12. How does the State usually treat the subject of railroads?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. Name the articles of commerce which can be easily produced in the United States. Name those articles which cannot be easily produced.
2. Compare graphically the volume of the commerce of the United States with that of each of the leading countries of the world. (See "Review of World's Commerce" issued by the Bureau of Foreign Commerce; also "Statesman's Year Book.")
3. What class of business men suffer when the tariff is suddenly raised? when it is suddenly reduced?
4. What is meant by reciprocity? What are subsidies? bounties?
5. To what four countries do we sell the most? From what four countries do we buy the most?
6. What does the constitution of this State say about commerce?
7. What are the constitutional provisions in this State in reference to railroads? in reference to roads? Has this State a railroad commission? If so, what are its powers and duties?
8. Prepare a five-minute paper on The Value of Good Roads.
9. Does this community suffer on account of bad roads? If so, in what way does it suffer?

10. Prepare a five-minute paper on The Commerce of Your State, naming the principal articles of its commerce, describing its commercial centers, its highways, its railways and its waterways.

11. Name six great railway systems engaged in interstate commerce.

12. Do you think the federal government should assist in road building?

13. How much money did the federal government spend last year on the improvements of rivers and harbors? What share of this money did this State receive?

14. What effect has the Erie Canal had on the commerce of the United States?

15. Examine the map of the United States and determine where canals beneficial to commerce might be constructed. What would be the probable effect on commerce of a canal connecting the Mississippi River and the southern waters of Lake Michigan? From what quarter would opposition to such a canal come?

16. Name the great inland centers of commerce in the United States. Describe how the commerce of each may have been influenced (1) by rivers, (2) by canals, (3) by roads, (4) by railroads.

17. Debate this question: The telegraph business should be conducted by the post-office department.

18. What do you think should be the policy of the United States in reference to immigration?

19. What is the present policy of each of the political parties in reference to the tariff?

20. In what way will the Panama Canal be likely to benefit the foreign commerce of the United States?

TOPICS FOR SPECIAL WORK

1. The Control of Interstate Commerce. **1**: 483–486.
2. The Inter-State Commerce Act of 1906 (Text). **1**: 487–490.
3. The Protective Tariff. **18**: 491–503.
4. Immigration. **25**: 68–111.
5. Restrictions in International Trade. **19**: 387–410.
6. Government Control of Railroads. **19**: 361–372.
7. The Public Nature of Railroads. **18**: 534–543.

XXXVII

ELECTIONS

169. The Importance of Elections. In a democracy there is no task of government that requires a more faithful and honest performance than the holding of elections, for on election day popular government is on trial. In the polling-booth the people either justify their right to rule or declare democracy a failure. For this reason the election should be the purest of political institutions. Election officers should be men of the highest character, and election laws should be the embodiment of justice and fairness. Corrupt practices at elections should be punished with the greatest severity, for a fraud upon the ballot-box is treason to democracy, and should incur a penalty suitable to so great a crime.

170. Elections Conducted by State Authority. We have learned that the right of suffrage and the qualifications of voters are determined by State authority (p. 81). The holding of elections is also almost entirely an affair of the State. The only instance of the power of the federal government to participate in the management of elections is seen in the right of Congress to make regulations concerning the elections held for choosing representatives (**24**). Under this clause of the Constitution Congress could doubtless provide for an almost complete control of the election of representatives, but it has refrained from using its power to the fullest extent. It has been content merely to appoint a day (p. 96) on which the elections of representatives shall be held, and to require the division of the

State into congressional districts, leaving all other matters to the State.

171. Registration. The real work of preparation for election day is accomplished by the voluntary action of political parties. One step in the work of preparation, however, is taken under the direction of government. This is the registration of voters.

Nearly all the States provide for a system of registration, by which the qualifications of those who wish to vote are ascertained several weeks before election day. When a person who has been duly registered presents himself at the polls as a voter, the election officials, with the registration book before them, have little trouble in satisfying themselves of his right to vote.

172. The Casting and Counting of the Ballots. In nearly every State the first Tuesday after the first Monday in November is general election day. On this day the voters repair to the polls to elect whatever officers are to be elected, and to vote upon questions that may be referred to the people. For convenience the counties and cities are subdivided into election districts or precincts, a precinct usually containing several hundred voters. The election is conducted by the election officers of the district, judges (moderators) and clerks, who are either elected by popular vote, or are appointed by a duly constituted authority.

The voting goes on during the hours of daylight, and in most of the States is conducted according to the Australian system. The voter enters a little booth and prepares his ballot while alone.[1] He makes a cross mark opposite each of the names of the candidates for whom he wishes to vote, folds his ballot in such a way that no one can see how he has voted, and, emerging from the booth, hands the ballot to an election officer who, in the presence of the other officers, and in the presence of the voter, drops it into

[1] In several States voting machines have made their appearance and are used to a limited extent.

First. If you desire to vote a straight party ticket, make a cross **X** mark in the circle on the ticket you wish to vote and nowhere else on the ballot.

Second. If you prefer not to vote a straight party ticket, but wish to vote for a majority of the candidates on any party ticket, make a cross **X** mark in the circle as before, and then make a cross **X** mark in the square to the right of the names of such other candidates as you wish to vote for, found under any other party name.

Third. If you prefer not to vote any party ticket, then make the cross **X** mark in the square to the right of the names of such candidates as you wish to vote for and nowhere else on the ballot.

Fourth. If you desire to vote for a name not on the ballot, write the name in the blank column and make a cross **X** mark in the square to the right of such name.

If you tear, deface or wrongly mark this ballot, return it to the judges and receive another.

I desire to vote a straight Republican ticket, as shown by the cross **X** mark in the circle thereon, except as otherwise indicated by the cross **X** mark opposite the names of other candidates elsewhere on the ballot.

I desire to vote a straight Democratic ticket, as shown by the cross **X** mark in the circle thereon, except as otherwise indicated by the cross **X** mark opposite the names of other candidates elsewhere on the ballot.

I desire to vote a straight Socialist ticket, as shown by the cross **X** mark in the circle thereon, except as otherwise indicated by the cross **X** mark opposite the names of other candidates elsewhere on the ballot.

REPUBLICAN TICKET.	DEMOCRATIC TICKET.	SOCIALIST TICKET.	BLANK COLUMN.
For President, THEODORE ROOSEVELT. For Vice-president, CHARLES W. FAIRBANKS.	For President, ALTON B. PARKER. For Vice-president, HENRY GASSAWAY DAVIS.	For President, EUGENE V. DEBS, For Vice-president, BENJ. HANFORD.	For President, For Vice-president,
For Presidential Electors, (*And continuing in like manner as to all candidates on national ticket.*)	For Presidential Electors, (*And continuing in like manner as to all candidates on national ticket.*)	For Presidential Electors, (*And continuing in like manner as to all candidates on national ticket.*)	For Presidential Electors, (*And continuing in like manner with national ticket.*)
STATE TICKET.	**STATE TICKET.**	**STATE TICKET.**	**STATE TICKET.**
For Justices of Supreme Court for a term of six years, WILLIAM R. SMITH. ☐	For Justices of Supreme Court for a term of six years, STEPHEN H. ALLEN. ☐	For Justices of Supreme Court, for a term of six years, G. C. CLEMENS. ☐	For Justices of Supreme Court, for a term of six years, ☐
For Governor, EDWARD W. HOCH. ☐	For Governor, DAVID M. DALE. ☐	For Governor, GRANVILLE LOWTHER. ☐	For Governor, ☐
For Lieutenant-governor, DAVID J. HANNA. ☐	For Lieutenant-governor, JOHN S. PARKS. ☐	For Lieutenant-governor, A. ROESSLER. ☐	For Lieutenant-governor, ☐
(*And continuing in like manner as to all candidates on state ticket.*)	(*And continuing in like manner as to all candidates on state ticket.*)	(*And continuing in like manner as to all candidates on state ticket.*)	(*And continuing in like manner with state ticket.*)
For Congressman, 6th District, W. A. REEDER. ☐	For Congressman, 6th District, H. O. CANTER. ☐	For Congressman, 6th District, W. F. LINTON. ☐	For Congressman, 6th District, ☐
For Senator, 33d District, I. D. YOUNG. ☐	For Senator, 33d District, HENRY R. HONEY. ☐	For Senator, 33d District, No Nomination.	For Senator, 33d District, ☐
COUNTY TICKET.	**COUNTY TICKET.**	**COUNTY TICKET.**	**COUNTY TICKET.**
For Representative, 88th Dist., A. G. MEAD. ☐	For Representative, 88th Dist., GEORGE H. McKINNIE. ☐	For Representative, 88th Dist., THOMAS HILL. ☐	For Representative, 88th Dist., ☐
For County Treasurer HENRY VAN TILBORG. ☐	For County Treasurer, F. S. CURTIS. ☐	For County Treasurer, O. E. COURSEN. ☐	For County Treasurer, ☐
(*And continuing in like manner as to all candidates on county ticket.*)	(*And continuing in like manner as to all candidates on county ticket.*)	(*And continuing in like manner as to all candidates on county ticket.*)	(*And continuing in like manner with county ticket.*)

A Sample Ballot for a General Election

the ballot-box. Thus the voter, if he desires to do so, can cast his ballot in perfect secrecy.

The votes are counted immediately after the polls are closed. The results of the election in the several precincts are sent to certain county (or city) officers, who determine the results of the vote in the entire county and issue certificates of election to the successful candidates. When State officers, or congressmen, or circuit judges, or presidential electors are voted for, county authorities send the results of the vote in the several counties to State officers, who determine the general result and issue certificates to the successful candidates.

173. The Advantages and Disadvantages of Secret Elections. The secret ballot, as we have it to-day, is an invention of recent years. Men of middle age remember when it was almost the universal custom to cast the ballot openly, and when election officers and bystanders could readily tell how a man voted. Under the open ballot system, bribery was simple and easy. The bribe-giver personally conducted the bribe-taker to the ballot-box and saw that he voted the way he was paid to vote. The open ballot also invited intimidation. Employers could inform their employees as to how it was desirable that they should vote, and could keep watch at the polls, and if an employee voted contrary to the wishes of an employer he was liable to suffer for his independence. To check bribery and intimidation the Australian or secret system of voting has been adopted.

It cannot be denied that the secret ballot makes intimidation and bribery more difficult than they were under the older plan, and due praise must be accorded to a system that decreases these evils. Nevertheless it must be acknowledged that secret voting is not an unmixed blessing. It tends to discourage a spirited, aggressive citizenship. A man who knows that if he will guard his tongue well his neighbor will not be able to tell for what candidate or for what party he intends to vote is tempted to conceal his

political opinions in order to escape any disagreeable consequences that might attend an expression of them. In other words, secret voting tends to smother and deaden rather than to awaken and strengthen a public spirit in the individual. Again, the secret ballot may be used to work revenge or to express personal dislike or to vent personal spleen or to give effect to some other unworthy motive of a private nature. In the secrecy of the polling-booth private considerations will often induce a man to deal mean little blows that he would be ashamed to deal if the light of publicity were beating upon his actions.

174. Bribery. The most persistent and dangerous enemy of honest elections is the bribe-giver. Bribery is as old as selfishness and ambition. Because the sons of Samuel took bribes (B. C. 1100) ancient Israel was hurried into monarchy. Pretorian guards of Rome, seduced by gold, raised a usurper to the imperial throne (193 A. D.), and at once the glory of the greatest empire the world has seen began to grow less. In England bribery increased with the growth of representative government, and in Shakspere's time it was causing the hands of Englishmen "to shrink up like withered shrubs." Parliament enacted laws against bribery at an early date, but the laws were outwitted. Homely verses written nearly two hundred years ago declare the truth, that mere legislation will not prevent bribery:

> The Laws against Bribery provision may make,
> Yet means will be found both to give and to take;
> While charms are in flattery, and power in gold,
> Men will be corrupt and Liberty sold.

In America, as in England, bribery has been fought in all the ways known to law-makers. In some States penalties against bribery are stated in the constitution, in others stringent acts for the prevention of corrupt practices at elections have been enacted. In all the States bribery is punishable as a crime, and in a few States the bribe-giver

is made equally criminal with the bribe-taker. A civil officer of the United States convicted of bribery is removed from office (**104**).

The fact that bribery thrives here and there in spite of law and public sentiment should not discourage the opponents of the evil. Bribery, like some other kinds of crime, is an ever present foe, and the fight against it must go on and on. We must not make the mistake of thinking that legislation and denunciation and opposition are of no use, for they are of the greatest use. If it were not for anti-bribery laws and anti-bribery movements, if it were not for the ceaseless fight against bribery, the electorate would suffer an undermining by the hands of the bribe-giver that would doubtless lead to our downfall. We are not doing a vain thing when we fight bribery, but a very necessary and a very useful thing.

QUESTIONS ON THE TEXT

1. Why is the holding of elections a highly important function of government?
2. Under what authority are elections held? To what extent does the federal government have authority over elections?
3. What are the purposes of registration?
4. Describe the method of casting and counting ballots.
5. What are the advantages and disadvantages of the secret ballot?
6. What can you say of the persistence of bribery in the history of politics? Why should bribery be fought?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *Corrupt Practices Acts — Intimidation of Voters.* In many States anti-bribery laws known as corrupt practices acts, have been passed. The nature of this kind of legislation may be learned from the following passages taken from the corrupt practice act of one of the States:

> "Whoever gives, or lends, or offers, or promises to give, lend, procure, or endeavor to procure, money or other valuable consideration, to or for an elector or other person, to induce such elector to register or refrain from registering for an election, or vote or refrain from voting at an election for a particular person, question, or proposition; shall be fined not more than $500 or imprisoned in the penitentiary not more than three years, or both."

"Whoever, being an elector, before, during, or after, an election, receives, agrees, or contracts for money, gift, loan, or other valuable consideration, office, place, or employment for himself or another, for registering or agreeing to register, for an election, or for voting, or agreeing to vote, or refraining, or agreeing to refrain from voting, for a particular person, question, or proposition, at an election; shall be fined not more than $500, or imprisoned not more than one year, or both, and be excluded from the right of suffrage for five years next succeeding such conviction."

In the same state, intimidation of voters is made a crime: "Whoever uses or threatens to use, force, violence, or restraint . . . or practices intimidation upon a person in order to induce or compel such person to vote or refrain from voting for a particular candidate, or being an employer of laborers . . . threatens to withhold or reduce the wages of, or to dismiss from service, an employee, in order to induce or compel such employee to vote or refrain from voting for a particular candidate at an election, shall be fined not more than $2000, or imprisoned in the penitentiary not more than three years, or both."

2. *The Short Ballot.* Many reformers urge the adoption of the "short ballot" at elections. Where the "short ballot" prevails, only the most important offices are made elective and only very few offices are filled by election at one time. The purpose of the "short ballot" is to enable the voter to examine his ticket and make an intelligent choice of candidates. The commission form of government is a recognition of the "short ballot" principle.

3. What does the constitution of this State say about elections? What does it say about bribery?

4. If there is a corrupt practices act in force in this State bring a copy of it into the class for examination. If such an act is not in force frame one.

5. Should candidates for public office be compelled to give an account of their election expenses? Should the publicity of campaign expenses be made *before* or *after* election?

6. How much better is the bribe-taker than the bribe-giver?

7. Bring into class for examination a ballot used at a recent election.

8. Name something that you as an individual can do to assist in preventing bribery.

9. What are the regulations in this State in reference to registration? Does the constitution of the State say anything about registration?

TOPICS FOR SPECIAL WORK

1. Bribery. **23**: 138–161.
2. Voting on Election Day. **23**: 80–119.
3. The Short Ballot. **1**: 384–391.
4. Reform of Election Laws. **1**: 512.
5. Repression of Political Corruption. **1**: 518–526.

XXXVIII

EDUCATION

175. Education a Function of Government. In all enlightened countries governments have found it wise either to supervise more or less closely or to control the education of youth. So generally is this true that we are justified in calling education a function of government. No government, however, assumes complete control in matters of education; no just government denies to the parent the right to educate the child in the home, but it is a proper function of government to require that the child receive a certain minimum of instruction somewhere, either in the home or in the school.

176. Education and Democracy. In a democracy the very life of the State is dependent upon the intelligence of the masses. Since an ignorant electorate is the most dangerous of foes, school-houses in America are as important as a means of defense as are armies and navies. The truth that the safety of a nation is to be sought in the virtue and intelligence of its citizens has been recognized by statesmen at every stage of development of American institutions, although practical measures for the general diffusion of knowledge have often been unduly postponed.

The growth of the public-school system in the United States has been coincident with the growth of democracy. During the colonial period, in several of the colonies encouragement and aid were given to public schools, but the masses of children were not reached. It was not till the people began to come forward as the real masters of government that provision was made for the education of all

the children of a community. As democracy grew stronger public schools became more numerous, and at last it became the policy of every State to furnish free of charge an elementary education to every child within its borders. The movement for the education of the masses has met with astonishing success. There are to-day in the public schools of this land nearly twenty millions of children preparing for the duties of citizenship under the guidance of more than half a million of teachers at an expense of nearly half a billion of dollars.

177. Public Education Controlled by the State. Nothing is said in the Constitution about education. The States reserved to themselves the management of their schools. In the constitution of each State provision is made for a public-school system. This provision is usually made in the broadest terms. The constitution of Massachusetts, which was adopted in 1780, and which is the oldest written constitution in the world now in force, declares that "wisdom and knowledge as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend upon the opportunities and advantages of education, . . . it shall be the duty of the legislature and magistrates in all future periods of this commonwealth to cherish the interests of literature and the sciences and all the seminaries of them; especially the University at Cambridge, public schools and grammar schools in the towns." Upon this broad constitutional foundation a magnificent and elaborate public-school system has been slowly reared. The more recent State constitutions are occasionally somewhat specific in reference to education, yet as a rule their language is broad and general, like that of the constitution of Massachusetts. It is a settled policy to leave the details of education to the legislature.

178. Education a Local Affair. As it has been the custom of constitutions to leave the details of educational policy

to the legislature, so it has been the custom of the legislature to leave the details of school management to the local government. The legislature usually passes a general school law which provides for the election or appointment of certain school officers, and states in general terms the powers and duties of these officers. The State law may further specify the manner in which text-books shall be furnished to pupils, the branches which shall be taught, the limits of the tax which may be levied for school purposes, the ages between which children may attend school, and the qualifications of teachers. Further than this the legislatures usually do not choose to go in their control of the schools; they are content to leave many things to be attended to by the local authority.

In most of the States school management is a separate and distinct branch of public service. School officers are independent of other public officers, school elections are held on special days, school taxes are levied and collected distinct from other taxes. This is not always the case, but, speaking generally, school government is decentralized and local. Each community is permitted to manage its schools in pretty much its own way.

179. The School District. The school systems of no two States are precisely alike, and even within the same State there are sometimes several plans of school government in operation. Everywhere, however, there is a unit of school government which we may conveniently designate as the *school district*. This district may be a small rural area, within which there is but one school-house and one teacher; it may be a township with several schools; it may be a city with numerous schools. In each district there is a governing body known by different names in different States, but most frequently called the school board.

The local board usually has large powers of control. It appoints teachers, locates and erects school buildings, makes rules for the guidance of teachers and pupils, selects

the text-books, and sometimes prescribes a course of study. In many States the officers of the district fix the rate of taxation which is levied for school purposes. In the exercise of these important functions they are limited and restrained at certain points by State law, but very frequently these limitations and restraints do not bear heavily upon them. In cities and in larger towns the actual management of the schools is placed in the hands of a superintendent who is appointed by the local board and who acts as the executive officer of the board.

180. The Support of the Public Schools. The local features of school government extend to the matter of taxation for their support. Nearly three-fourths of the vast sum expended upon public education in the United States is raised by local taxation. This means that the people of a community vote to take from their own pockets money for the support of the schools of the community. This fact alone would explain the affection in which the public schools are held. The people feel that the schools are their own because they contribute directly to their support.

Public school revenues which are not raised by local taxation are derived from various sources. One important source is the State school tax, so frequently levied. The operation of this tax is as follows: the legislature levies a tax on all property of a certain class within the State, and when this tax has been collected it is distributed to the counties or districts throughout the State according to a certain rule, usually according to the number of children of a school age. Under the workings of the State school tax, money is collected from all parts of the State, each locality contributing according to its ability; the money is then diffused over the entire State, each locality receiving according to its needs. In this way the wealthier communities help the poorer ones.

In most of the States an important school revenue consists of interest derived from permanent State funds

which have been acquired by the sale of public lands. In the original States the revenue derived in this way is not large, but in the admitted States the public lands have been the life-giving principle of the public-school system.

181. Common Schools, High Schools, Universities and Normal Schools. The State first provides for a system of *common schools,* in which the fundamental branches may be taught. The curriculum of these schools includes reading, spelling, writing, arithmetic, grammar, geography and history. Above the common schools almost every State supports a system of *high schools,* in which pupils may receive instruction in the natural sciences, in literature, history and civics, in the higher mathematics, and in the ancient and modern languages. To crown its educational system the State frequently maintains a *university* which its youth may attend without charges for tuition. To provide a supply of competent teachers for its common schools the State usually supports one or more *normal schools.*

182. The Educational Activities of the Federal Government. Under its power to provide for an efficient army and navy the federal government supports and controls two great training-schools, the Military Academy at West Point and the Naval Academy at Annapolis. In addition to these it maintains at Washington an Army War College for advanced military students, and at Newport, Rhode Island, a Naval War College for advanced naval students. The federal government also supports the Indian schools and maintains a system of elementary education in our insular possessions.

Although the federal government has little to do with the matter of education, it nevertheless has been exceedingly generous in its encouragement of higher institutions of learning. It is estimated that more than twenty million acres of the federal public lands have been devoted to the support of colleges of agriculture and the mechanic arts.

Congress appropriates annually the sum of twenty-five thousand dollars to each State (or Territory) for the benefit of an agricultural college.

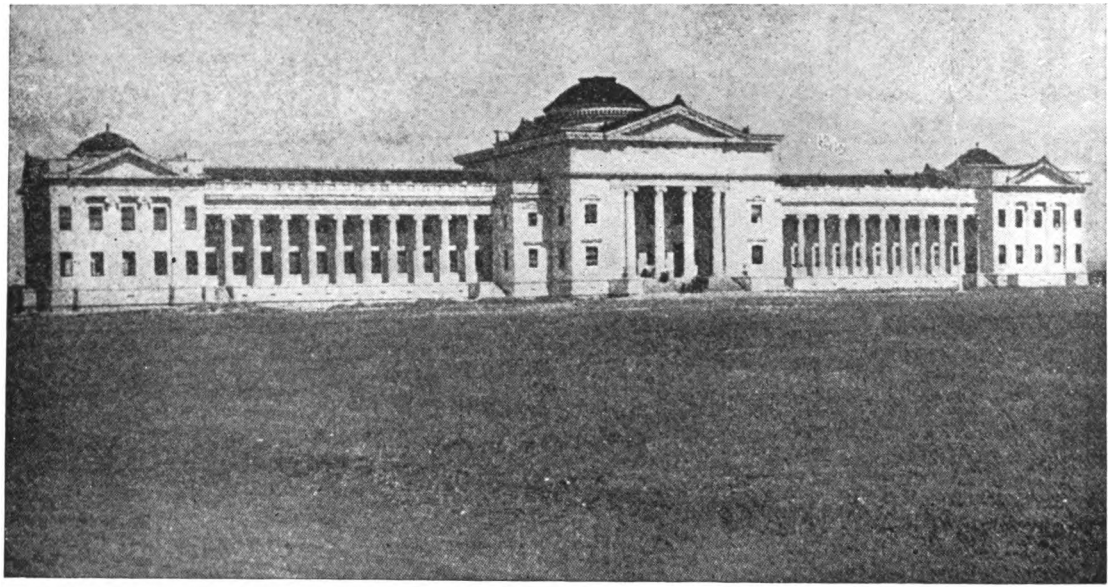
The chief educational officer of the federal government is the *Commissioner of Education,* who has charge of the Bureau of Education, a subdivision of the Department of the Interior. Owing to the complete separation of the State and federal governments in respect to education, the duties of this national officer are confined to the collection of educational statistics and to the publication of these and other matters of interest to school people. The national Bureau of Education has charge of public education in Alaska.

QUESTIONS ON THE TEXT

1. To what extent is education a function of government?
2. What can be said of the importance of education in a democracy? Trace the growth of popular education in the United States.
3. Where is the authority for public education located? How do State constitutions usually treat the subject of education?
4. What is the attitude of the legislature toward the management of the schools? To what extent does the legislature control the schools?
5. What is meant by the school district? What are the powers of the officers of the district?
6. From what source is the greater part of the school revenues derived? Explain the State school tax.
7. Describe each of the several grades of schools supported by the State.
8. Give an account of the educational activities of the federal government. What are the duties of the United States Commissioner of Education?

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. *Cadets and Midshipmen.* Each congressional district in the United States (also each Territory and the District of Columbia), is entitled to send one cadet to the Military Academy. In addition to these, each State is entitled to two cadets at large and the United States, forty cadets at large. The appointment of a cadet from a congressional district is made upon the recommendation of the congressman from the district; cadets from the State at large are recommended by the United States senators of the State, and those from the United States at large are appointed by the President. The midship-



A Normal School

men at the Naval Academy are apportioned and appointed in the same way as the cadets, except that the United States has only five naval cadets at large.

Candidates for both these schools must be physically sound and of robust condition. Candidates for the Military Academy must not be under 17 nor over 22 years of age and must undergo an examination in the common branches, algebra through quadratic equations, physical geography, the outlines of general history and physiology and hygiene. The pay of a military cadet is $709.50 a year. Candidates for the Naval Academy must not be under 16 nor over 20 years of age and must undergo an examination similar to that set for applicants for entrance to the Military Academy. The pay of a naval cadet is $600 a year. The course of the military cadet is four years; that of naval cadets six years.

2. Does the constitution of this State provide for free schools? Does it specify in reference to taxation for the support of schools? in reference to the length of the school term? in reference to the subjects to be taught? in reference to the age of children who may attend?

3. Are children in this State compelled by law to attend school? If so, state whether the law is effective or not. If there is no compulsory law state the reasons for and against the enactment of such a law.

4. Is a State school tax levied in this State? If so, how much revenue does it yield? How is it distributed to the localities? How much per pupil is expended on education in this State? Compare this with the amount expended in adjoining States.

5. What is the governing body of this school district called? How is it chosen? What are the names of its members? Make out a list of its powers.

6. Bound this school district. How many pupils are within it? How much money is expended for education within this district? How much is this per pupil? Is this above or below the average in this State? Do the people of the district elect the school officers? Do they contribute the greater part of the taxes which go to the support of the schools?

7. What does the school do for you as an individual? What does it do for society? What does it do for government?

8. Make out a list of the duties which pupils owe to a school; a list of the duties which the teacher owes to the school; a list of the duties which the school officers owe to the school.

9. (In some schools the students organize as a commonwealth, electing from their number (1) a *council* which makes the rules, (2) a *court* which decides when a pupil has violated a rule, and (3) a *governor* who executes the order of the court. In these schools government resembles a democracy.) Draw up a constitution for the government of a school by its students, providing for the three departments, the election of officers and the distribution of powers. Should the terms of the student officers be for short or for long periods? What rules would be wise for the council to make in reference to

tardiness? to whispering? to absence? to truancy? to cheating? to rudeness?

10. What advantages does a school derive from governing itself?

11. Does government in the school prepare for citizenship outside of the school?

TOPICS FOR SPECIAL WORK

1. The Education for a Democracy. 4: 379–393.
2. State Supervision of Schools. 12: 215–223.
3. Civic Education. 16: 97–117.
4. The Universities. 3: Vol. II, 711–742.

XXXIX

CORPORATIONS

Introductory. We have already learned what a corporation is and what are the characteristics of a corporation (p. 53). We have also learned that corporations are either public or private, and our study of municipalities was a study of the public or political corporation. We shall now study the private corporation.

183. The Corporation in Modern Life. The private corporation, although it is of ancient origin, was not an important factor in society until the middle of the last century. To-day it is one of the most important factors of civilization. Private corporations spin and weave the clothes we wear; they control the manufacture and sale of much of the food we eat; they supply the furniture in our houses, the dishes on our table, the utensils in our kitchens, the books in our libraries, the tools in our shops, the implements on our farms; they lend us money and they invest our money for us; they insure our lives; they carry us from place to place on trolley-lines and railroads and steamboats. In whatever direction we turn in the financial or commercial or industrial world we meet the private corporations.

184. The Evolution of Corporate Industry:

I. *Individual Enterprise.* The great private corporation of to-day is the outcome of changes which have been occurring in commerce and industry during the last two centuries. Before the eighteenth century commerce and industry were organized on the basis of individual effort. Cloth was woven in a shop in which there was but one loom, and the operator of the loom was its owner. The man who

ground the grain was the owner of the mill. Shoes were made by the owner of the shop. Passengers were conveyed from town to town in a coach owned by its driver. And so it was in all the trades and occupations: they were all organized and conducted on the basis of individual enterprise.

About the middle of the eighteenth century a great change began to come over the face of industry. In 1733 John Kay invented the flying shuttle and thereby doubled the efficiency of the loom. A few years later water-power was applied to the loom. One man could now operate two looms, and could weave four times as much cloth as could be woven before. In 1769 Arkwright brought out his wonderful spinning-machine, and in the same year Watt patented his condensing steam-engine. These inventions reorganized the textile industry. Instead of the little shop with its single loom and weaver, there appeared the great factory with its hundreds of looms and scores of operators. As it was with weaving, so it was with other industries: inventions and improved machinery caused nearly all of them to be conducted on a new plan.

II. *The Partnership.* How was this reorganization accomplished? How were the humble shops of the seventeenth century transformed into the huge factories of the eighteenth century? By a combination of the wealth and services of individuals. The single craftsman did not have enough money to build a factory and equip it with machinery, so several persons combined their capital and formed a *partnership.* The partnership as a legal form of business association is almost as old as recorded history, yet it had never before been brought into such frequent use as during the industrial revolution of the eighteenth century. The two important legal characteristics of a partnership are: (1) the partners are individually liable for the debts of the partnership; (2) the death of one of the partners brings the partnership to an end. A partner

is liable, therefore, to lose his entire fortune in paying the debts of the partnership, and the partnership is liable to be brought to an end at any moment.

III. *The Corporation.* The colossal enterprises which were inspired by the appearance of the steamboat and the locomotive and the telegraph in the first half of the nineteenth century could not be satisfactorily conducted under the partnership form of association. Here was a railroad to be built at a cost of five million dollars. The people of the region through which the road was to pass favored the enterprise and were ready to invest their funds in it, but men with money were loath to enter into a partnership for building the road because they feared that the enterprise might fail and that they might be ruined by the debts of the partnership. Besides they could not tell when the enterprise would be brought to an end by the death of a partner. To meet these objections of investors the corporation was brought into use. The corporation does not die with the death of a member (p. 53), but lives on for the period given to it by law, if that is for a thousand years. This immortality of the corporation gives time for the accomplishment of great things. Another advantage of the corporation over the partnership is that the shareholders in a corporation are not individually liable for the entire debt of the company. Furthermore, the shares in a corporation can be easily and quickly transferred and sold when the holder wishes to dispose of them. Through the agency of the corporation the building of the coveted railroad was made possible. To raise the money fifty thousand shares of one hundred dollars each were offered to the farmers and merchants and mechanics and capitalists of the communities to be benefited by the road, and shares were taken according to each one's ability and willingness to invest, some taking a single share, others ten shares, others a hundred shares. In this way thousands of people assisted in the building of the road and in the development of the country,

and thousands shared in the profits. As it was with the railroad, so it was with many other undertakings: about the middle of the nineteenth century the corporation began to be brought into general use in the organization of industry and commerce.

185. Corporations Created by State Authority. The charters under which corporations conduct business are nearly always granted by State authority. The Constitution of the United States has no specific provisions in reference to corporations, yet Congress can and does grant charters to corporations organized for carrying on enterprises which come within the range of federal authority. For example, Congress under its power to regulate the currency has granted charters to national banks; under its power to regulate interstate commerce it has granted charters to transcontinental railway companies. As a rule, however, the creation and regulation of corporations are State functions. How important these functions are may be seen in the State constitutions, where the article on corporations sometimes requires as much space as is given to one of the three great departments. "Formerly," says Justice Brewer, "there were two factors, the individual and the State; now there are three, the individual, the State and the corporation."

186. Corporate Combinations (Trusts). About 1880 the great corporations began to devise methods of protecting themselves against the ravages of competition. While competition gives life to trade it at the same time plays havoc with profits. Especially is this true in these times, when a salesman with the aid of the telephone and telegraph can do as much higgling and bargaining in an hour as could be done a hundred years ago in a month, and when new inventions and processes are constantly reducing the cost of production. So in order to stifle competition, the corporations began to pool their interests and enter into

agreements[1] as to prices and as the amount of goods to be produced. In a few years corporate combination had been carried so far that it seemed that the principle of competition in business would have to die and that the principle of monopoly[2] would be established. Now monopoly is not only contrary to the constitutions of most of the States, but it is also contrary to the commercial instincts of the American people. So in order to check the growth of monopoly, Congress, in 1890, passed the Sherman Anti-Trust Act. This famous statute declares that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade, or commerce among the several States, is illegal, and it provides that persons entering into such contracts or engaged in such combinations shall be liable to a heavy fine or to imprisonment, or to both fine and imprisonment.

The Anti-Trust law did not prevent the growth of corporate combinations. The corporations continued to merge and blend their interests and by the opening of the twentieth century, one-third of the total products of all industries, excluding that of agriculture, had been brought under the control of corporate combinations, or trusts so-called.

187. The Trust Problem. The chief advantage of combination lies in the direction of economy in production. Under the trust system only the best-equipped establishments are kept running; plants are located with the view of reducing freight expenses; only the most desirable patents and brands are made use of; the division of labor

[1] These agreements received the name of *trusts* because in many cases the combining companies deposited their stocks with a central board of trustees, who managed the business of the uniting companies as if it were a trust. After trust agreements were declared illegal, the name trust was still applied to great corporate combinations.

[2] A monopoly is an exclusive privilege to deal in or control the sale of certain things. Congress grants a monopoly to authors and inventors (52).

is carried to the most effective point; there is great saving in office expenses. That the trust reduces the cost of production to the lowest possible figure cannot be denied.

Neither can it be denied that there are many evils connected with trusts. The trust reduces the number of employees, especially the number of travelling salesmen; it drives small competitors out of business by selling at a temporary loss; it gains exclusive control of certain commodities and then, in some instances, raises the price to a profit in excess of that possible under competition. Then the trusts often over-capitalize: they authorize stock far in excess of the cash value of their property. One trust over-capitalized — " watered " its stock — to the amount of nearly a billion dollars, and then asked the public to buy. The thousands of investors who purchased the stock at fifty dollars a share, and afterwards saw its value fall to ten dollars a share, appreciate the danger of over-capitalization. Over-capitalization works injury in another direction: the attempt of the trust to continue in hard times the dividend upon a large bulk of " watered " stock places an unnecessary burden upon consumers and laborers; upon consumers in the form of higher prices, upon the laborer in the form of lower wages.

Both the State and the federal government may assist in applying the remedies for trust evils. The State possesses the power to incorporate and can therefore determine precisely the privileges a corporation is to enjoy within the State; the federal government under its power to regulate interstate commerce can regulate the privileges of corporations trading between the States. Here would seem to be authority enough. If all the States and the federal government would work together the trust problem might not be so difficult of solution.

But the States have not worked together; the corporation laws of one State have set at naught the laws of another State. Thirty-two States have attempted by legislation to

control trusts, but their efforts have been thwarted by the action of sister States. Within the region of its authority the federal government has been active and to a certain degree successful in combating trust evils. Under the Sherman Anti-Trust Law corporations consisting of a combination of corporations have been compelled to dissolve, on the ground that they were formed in restraint of trade between the States.

This victory of the law over giant corporations is full of hope. It shows that the law is still supreme. We need not fear the trusts as long as we know they can be compelled to obey law. Keep government strong enough to apply remedies, and remedies in good time will doubtless be found.

QUESTIONS ON THE TEXT

1. Give an account of the part played by the corporation in modern society.
2. How was industry organized before the eighteenth century? What causes led to a change in this organization?
3. What is a partnership? What advantage had the corporation over the partnership?
4. From what source do corporations receive their power?
5. What caused corporations to combine?
6. What are the provisions of the Sherman Anti-Trust Act?
7. What are the advantages and disadvantages of trusts? How may trusts be controlled?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Give illustrations of partnerships existing in this community; of corporations; of trusts.
2. A local tinner charges 25 cents for a pan which you can buy from a trust for 23 cents: would you buy your pan from the local tinner or from the trust?
3. What does the constitution of this State say about corporations? about trusts?
4. If it were shown that the trusts benefit society in material things but dwarf individuality, what would be your attitude toward trusts? Does society exist for your benfit, or do you exist for the benefit of society?
5. Name five of the largest industrial organizations in the United States. What effect have these combinations had upon the prices of the articles they produce?

6. Has this State passed an anti-trust law? If so, has this law accomplished its purpose?

7. *Interstate Industrial Commission.* It has been suggested by those high in authority that the great industrial concerns engaged in interstate business should be controlled by an Interstate Industrial Commission constituted similar to the Interstate Commerce Commission and clothed with power to regulate the rates of commodities, just as the Interstate Commerce Commission regulates the rates of railroads. Discuss the pros and cons of such an arrangement.

TOPICS FOR SPECIAL WORK

1. Growth of Large Industries. 18: 312–322.
2. Corporations. 19: 155–159.
3. The Sherman Anti-Trust Act (Text). 1: 490–492.
4. The Federal Control of Trusts. 1: 492–496.
5. Federal Incorporation. 1: 497–502.

XL

LABOR

188. The Growth of Labor Organizations. Workingmen's associations or trade unions, such as we have to-day, had no existence before the latter part of the eighteenth century. In the days when industry was in its simple form of organization, when almost every workman was a proprietor, there were few who could be classed as employees. A German scholar[1] informs us that in 1784 in the duchy of Magdeburg there were 27,050 independent masters and only 4,285 assistants and apprentices, and that about the same time in the principality of Würzburg there were 13,762 masters with 2,176 assistants and apprentices. That is to say in more than five-sixths of the industrial establishments of these two places the master carried on his work single-handed. As it was in Germany, so it was in England and America before the industrial revolution (p. 286): the number of employees was extremely small.

The factory system brought about a complete change in the industrial condition of the workman. A craftsman was now the owner neither of the tools with which he worked nor of the articles which his craft fashioned; he was a hired man, an employee whose chief industrial interest was his wage. It was to be expected that employees would unite to advance their interests, and it was not long before workmen began to combine, not only for the purpose of putting up wages and shortening the working day, but for the advancement of all their interests. Those engaged in the same trade, or allied trades, united in a per-

[1] Karl Bücher, "Industrial Evolution," p. 188.

manent association, called a trade union, the abiding purpose of which was to promote in every lawful way the general welfare of the associated members. Trade unions in England at first did not have smooth sailing, for rulers were at heart against them; but they steadily prospered, and in 1871 were formally recognized by an act of Parliament as legal organizations. This recognition caused them to flourish as never before, and to-day England is the strongest center of trade unionism in the world.

The trade-union movement in America began about the same time that it began in England, but it did not meet the same fierce opposition. In 1870 New York, by statute, legalized the trade union, and in recent years the right of workingmen to combine has not been seriously questioned anywhere in the United States. In America, law and public opinion have been almost uniformly on the side of the trade union, and it has prospered here as in no other country, England alone excepted. More than two million workingmen in the United States are enrolled in trade unions, one union alone having the enormous membership of three hundred thousand.

189. The Aims of Labor Organizations. The aims of labor organizations are usually clear and well defined. They strive for the social and intellectual as well as for the economic betterment of the working classes. They want the workingman to receive a wage that will enable him to buy a fair share of the good things of life, and they want the working day to be of a length that will give leisure for the enjoyment of the benefits of education, culture and refinement. They advocate the abolition of child labor, because they want the children to attend school. They demand that work in factories and mines be done under sanitary conditions, because they regard the health of workingmen as a matter of supreme importance. In brief, they favor all movements that tend to elevate labor and resist all movements that tend to degrade it.

190. Government and the Workingman. For the accomplishment of many of their purposes labor organizations have invoked the assistance of government. The Constitution is silent on the subject of labor. The relations of employer and employed are to be regulated by the State, and labor problems must be solved by the State. The federal government fixes the wages of its employees, prescribes the length of their working day (eight hours), investigates the conditions of the laboring classes, collects labor statistics and limits the hours of labor of employees engaged in interstate commerce. Further than this it cannot go.[2]

The earlier State constitutions contain nothing about labor, because when they were framed there were no labor organizations and no labor problems. In recent years the constitutions are inserting clauses pertaining to labor. The constitution of Wyoming declares: "The rights of labor shall have just protection through law calculated to secure to the laborer proper rewards for his service and to promote the industrial welfare of the State." The constitutions of California and Idaho forbid the employment of Chinese laborers upon State or municipal public works. The constitution of North Dakota declares that every citizen of the State shall be free to obtain employment wherever possible, and forbids the exchange of blacklists[3] between corporations. In Louisiana the constitution forbids the passage of any law fixing the wages of manual labor. Numerous other illustrations might be given to show that the States are beginning to introduce the subject of labor into their constitutions.

It is in the field of State legislation that we may best learn how deeply government is concerned in the affairs of the workingman. In more than two-thirds of the States

[2] Of course Congress can regulate labor matters in the Territories and in the District of Columbia.

[3] Lists of persons objectionable to employers.

the employment of children under twelve years of age is forbidden by law; in more than half of the States women may not work in factories more than ten hours a day; in thirty-one States women working in shops must be provided with seats; in nearly half the States the working day of State and municipal employees is limited to eight hours; in twenty-four States there is official inspection of factories and mines; in two-thirds of the States there are bureaus of labor for collecting and giving out information on labor topics. The most remarkable instance of legislation regarding labor comes from Utah, where the law prohibits grown men from working more than eight hours a day in mines. It was thought that this law was unconstitutional, because it virtually denies to adults freedom of contract, but the Supreme Court of the United States declared that it was constitutional on the ground that working in mines is a matter that comes under the police power (p. 313) of the State.

The recognition of labor organizations by government is becoming quite general. Most of the States provide for the incorporation of trade unions, and a federal law permits national trade unions to be incorporated, provided they have two or more branches in every State, and maintain headquarters in the District of Columbia. Besides giving them power to incorporate, several States have lately attempted to protect trade unions by making it a misdemeanor for an employer to discharge an employee for belonging to a labor organization. Two States have enacted laws that certain public work shall be performed only by labor unions — as full a recognition of labor organizations as it is possible, perhaps, for government to give.

191. The Settlement of Labor Disputes. The chief function of the labor unions is to enable workingmen to avail themselves of the strength of organization when they are bargaining with their employers for wages and hours of labor. When a single workman in an establishment em-

ploying hundreds asks for higher wages he is not likely to receive as much consideration as would be shown to a similar request coming from all the workmen united in a compact body. Under the trade-union system, instead of individual bargaining between employer and employee, there is collective bargaining: representatives of the labor organization meet the employer and there is higgling as to the price that shall be paid for labor, and when a bargain is struck it binds all parties, including every member of the organization. In some instances this collective bargaining is conducted on a vast scale, affecting not only a single establishment but whole industries.

As long as collective bargaining is possible there is industrial peace, but when it fails, when employer and organized employees fail to come to an agreement, there is industrial war. In this warfare the chief weapons of the employer are the lockout [4] and the blacklist, and the weapons of the employees are the strike and the boycott.[5] The strike is the most powerful ally of the workingmen, but it is at the same time a source of much danger and inconvenience to society. It is estimated that the losses occasioned by strikes during the last twenty years aggregate more than $500,000,000.

So vast have been the losses occasioned by strikes, and so seriously have they disturbed business, that government has been moved to provide means for their settlement. About half the States have established *boards of arbitration,* before which the disputes of employers and employees may be settled. These arbitration boards can inquire into the causes of a strike and render a judgment as to the merits of a dispute, but in no State can such a judgment be enforced; in no State is there compulsory arbitration.

[4] "A refusal on the part of the employer to furnish work to his employees in a body."

[5] A refusal to buy from, sell to, or have any dealings with, certain persons, or companies.

Boards of arbitration, therefore, must depend upon the power of public opinion to give their decisions weight. Arbitration in several States has met with a measure of success, but in most of the States in which it has been tried it has not amounted to much.

192. The Labor Union and the Individual Workman. How shall government in its efforts to maintain industrial peace so deal with the labor organizations as to protect them in their rights, and at the same time not infringe upon the rights of the individual workman? This is the labor problem stated in its broadest terms. It is the trust problem over again. The giant labor unions and the giant corporations have been produced by the same industrial forces, have the same aim — the avoidance of the evils of competition — and offer to government the same kind of problem to solve.

In our attempts to solve the great labor problems, two facts ought always to be kept in mind. First, in its dealings with labor organizations, the government should reign supreme. There should not arise within the State a power that is greater than the State. Great labor unions as well as great corporations are equally accountable to the law. Second, the liberty of the individual must be preserved. Workingmen should be free to enter the union or to remain out of it, and they should not be made to suffer because of their action in respect to this matter. There is no freedom if any organization outside of government itself can go to the individual and enforce its rules upon him: government, and government only, can lawfully and rightfully coerce an American citizen.

QUESTIONS ON THE TEXT

1. In what manner was labor organized in the eighteenth century? Give an account of the growth of labor organizations in England; in America.
2. For what purposes do workingmen combine?

3. In what relation does the federal government stand to labor organizations?

4. To what extent is the subject of labor introduced into State constitutions?

5. Give an account of the legislation of the several States in reference to labor matters? To what extent are labor unions recognized by government?

6. What is collective bargaining?

7. What is industrial war? How does war of this kind affect the social welfare?

8. In what way have the States attempted to settle labor disputes?

9. In what respect does the labor problem resemble the trust problem? In the solution of the labor problem what two principles should guide?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Does the constitution of this State say anything about labor or labor organizations? about strikes or lockouts? about boycotts or blacklists?

2. At what age may children be employed in the factories in this State? What is the length of a day's labor for one employed upon public work in this State?

3. Is there a bureau of labor statistics in this State? If so, secure a copy of the last report of its chief officer and find answers to the following questions: What strikes have occurred in this State during the past year? What per cent. of these were successful? Were any of the strikes settled by arbitration? What is the average daily wages of workmen in this State? Is this average increasing or decreasing? What does the commissioner of the bureau recommend in the way of legislation bearing upon labor problems?

4. Is there a board of arbitration in this State? If so, secure a copy of its report and ascertain what it is doing in the way of settling labor disputes.

5. In about one-third of the States it is against the law for an employer to exact, as a condition of employment, an agreement from an employee not to become a member of a labor organization. Is it against the law in this State for an employer to exact such an agreement?

6. Show how a strike sometimes affects a great many more people than the strikers and their employers. Show how a great strike affects the business of the entire world.

7. Prepare a paper on Cumpulsory Workingmen's Insurance. See fourth special report of the United States Commissioner of Labor. This is a very important topic.

8. If you were an employer of labor, do you believe you would be willing to sacrifice a little money for the sake of the happiness and comfort of your employees? Is it likely that the labor problem will ever be satisfactorily solved as long as both capitalists and laborers ignore moral considerations in their dealings with each other?

9. Is there in this State an Employer's Liability Law? If so, what are the provisions of this law?

TOPICS FOR SPECIAL WORK

1. The Labor Unions. 4: 349–367.
2. Trade Unions. 18: 245–256.
3. Labor Organizations. 19: 476–485.
4. Labor Laws. 25: 471–493.

XLI

CRIME

193. The Definition of Crime. In the simplest and rudest stages of society wrong-doing was regarded as a private matter, and the wrong-doer was punished by private hands. The murderer was delivered over to the vengeance of the family of which the slain was a member; the thief was punished by the person from whom the goods were stolen. As society grew more highly organized, and as the power of the state increased, private vengeance was gradually disallowed, and the definition and the punishment of crime became strictly a function of government.

The first task of government in respect to crime is to define crime, to declare what actions are criminal. A crime is an act injurious to society and punishable by law, but before an act can be regarded as a crime it must be stamped as such by government. An act may be vicious or sinful, and yet if it is not named by law as a punishable offense it is not a crime.

As society becomes more complex the offenses designated by law as crimes become more numerous.[1] The telegraph

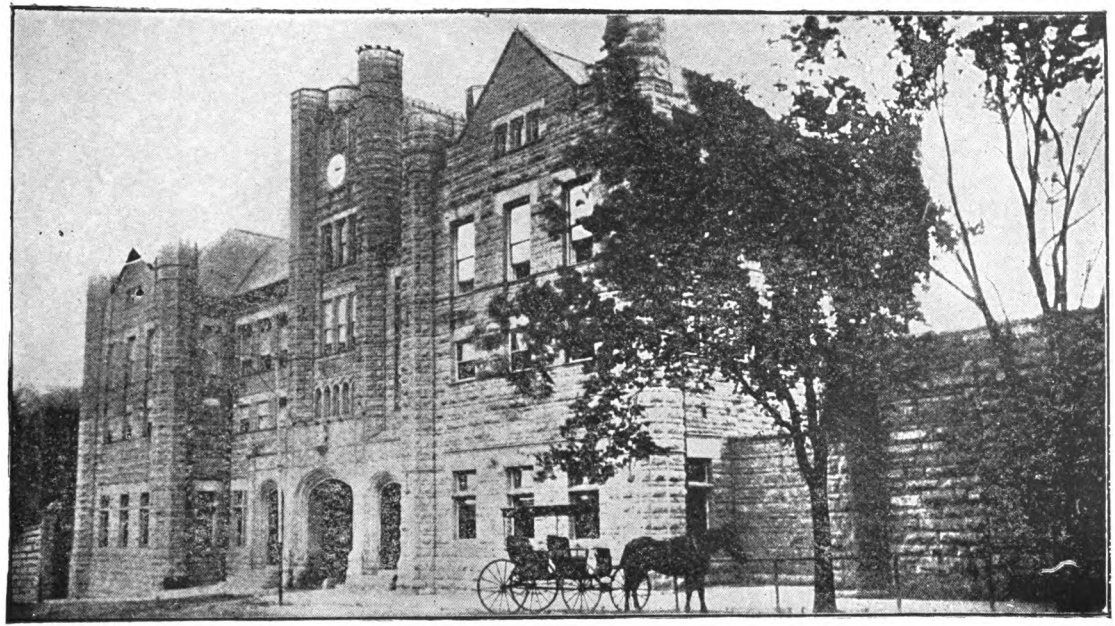
[1] The following table shows the nature of the offenses for which criminals in the United States are convicted and gives the percentage which each class of crimes bears to the whole number committed:

Crimes against government, as treason, counterfeiting, anarchy	2.2%
Crimes against society, as disturbance of the peace, drunkenness	22 %
Crimes against the person, as murder, assault, mayhem	21.9%
Crimes against property, as burglary, arson, theft	45.8%
Miscellaneous crimes	8.1%
Total	100.0%

has brought the crime of tapping wires and stealing electricity; railroads have brought the crime of train wrecking; corporate combinations have caused penalties to be pronounced against an undue restraint of trade; the factory has called forth penalties against the criminal neglect of the safety of workingmen. "All changes in social organization, in custom, in political control, import changes in the criminal law." Society is constantly defending itself against new dangers, and whenever an act of omission or commission is seen to be clearly hurtful to the public it is designated by law as a crime.

194. The Punishment of Crime. When the law defines an act as a crime it usually at the same time provides a punishment. In the olden times punishment followed the law of retaliation: a life for a life, an eye for an eye, a tooth for a tooth. For the crime of murder this rule still prevails in most countries, although in several States capital punishment has been abandoned. By modern usage punishments for crime are assigned without any purpose of retaliation. The criminal is punished for the benefit of society, and not for the sake of private or public vengeance. What the punishment for a crime shall be is a question of expediency for the law to determine. In ordaining a punishment, however, it is the rule to make its severity correspond in some degree to the heinousness of the offense committed. When the form of punishment is not death it is usually either a fine in money or imprisonment for a definite period of time. Excessive fines or cruel or unusual punishments cannot be inflicted by the federal government (142), but the State can provide such punishments as it deems proper, even if these seem to be cruel or unusual.

195. Crime and the State Government. In the United States the duty of defining crimes and affixing penalties and of punishing offenders belongs almost entirely to the State government. The constitution of the State generally allows the legislature to deal with crime in its own way.



A State Penitentiary

Since each State deals with crime in its own way, criminals fare differently in different States. "The criminal code in one State in 1879 provided for the punishment of one hundred and fifty offenses as crimes, only one hundred and eight of which were recognized as crimes by the code of another State. . . . The penalty for perjury in one State is a fine limited between a minimum of five hundred dollars and a maximum of two thousand dollars; in others five years' imprisonment; in still others imprisonment for life; and in one death, if the crime causes the execution of an innocent person. . . . The penalty for arson varies from imprisonment for from one to ten years to death."[2] In one State murder may be punishable by death and horse stealing by imprisonment for life; in an adjoining State horse stealing may be punishable by death, and murder by imprisonment for life.

While this diversity in the laws of the different States in respect to crime may seem regrettable, we must not jump to the conclusion that the definition and punishment of crime should be given to the federal government. In dealing with crime, government is fighting with one of the foes of society, and the principle of local self-government, and the principle that a law to be effective must harmonize with the morality and sentiment of the community in which it is to be executed, both sustain the policy of letting each State fight its foes in its own way.

196. Crime and the Federal Government. While the State government is the chief agent for suppressing crime, the federal government has a part in the work. Congress as well as the State legislature is constantly designating new crimes. Under the authority of the Constitution Congress may define and punish crimes in the District of Columbia, in the Territories and in other places wholly within the jurisdiction of the federal government; it provides punishment for offenses relating to the post-office, to interstate

[2] H. M. Boies, "The Science of Penology," p. 83.

commerce, to the currency, to federal elections, and to all other matters which come within the scope of the federal jurisdiction. Congress also defines and punishes piracies committed on the high seas and offenses against the laws of nations (**54**). Acts designated as crimes by Congress are punishable in federal courts. A person charged with violating a federal statute must be tried in the State in which the act was committed (**139**) and is entitled to a speedy trial by a jury consisting of citizens of the State.

Punishment for counterfeiting the securities and current coins of the United States is fixed by Congress (**50**). By "securities" is meant the government's bonds, its stamps and other representatives of value. For counterfeiting gold and silver coin the punishment is a fine of not more than five thousand dollars, or imprisonment at hard labor for not more than ten years. For counterfeiting paper currency the punishment is still more severe.

The highest crime known to the law is treason, which may be broadly defined as an attack upon government itself. Under this broad definition in England and in other countries much injustice has been wrought. Men who have committed no crime other than to earn the displeasure of rulers have been charged with treason and put to death. To guard against evils of this sort the framers of the Constitution took the precaution of precisely defining what acts should be regarded as treasonable. To commit treason against the United States one must wage war against them (**112**) or give aid or comfort to their enemies.[3] If there be an actual assemblage of men whose purpose is to proceed with force against the authority or property of the United States each member of such an assemblage may be adjudged a traitor. If a citizen — and no one but a citizen can be a traitor — sells a public enemy

[3] Treason against a State is defined in the State constitutions, and the definition is usually identical with that given in the Constitution of the United States.

provisions or arms, he gives that enemy aid and comfort and is guilty of treason. As an additional safeguard against the abuse of power the Constitution provides that at least two witnesses must testify to the treasonable act of which the accused is charged (113). The punishment of treason against the United States (114) is death, or, at the discretion of the court, five years of hard labor and a fine of not less than ten thousand dollars. A civil officer of the United States found guilty of treason by the process of impeachment is deprived of his office.

197. The Prevention of Crime and the Treatment of Criminals. Crime in the United States costs the government about two hundred million dollars annually — an amount almost half as large as that expended for education, and quite as large as that expended upon both the army and navy. The financial loss which criminals inflict upon society is estimated to be four hundred million dollars. The total cost of crime is, therefore, six hundred million dollars annually, and the burden is not growing lighter. The criminal class consists of more than one per cent. of the population, and it cannot be shown that this proportion is decreasing; indeed, able authorities assert that the proportion is increasing. This small but persevering and dangerous class has been present in all ages and in all countries and governments have tried in vain to extirpate it. Law-makers, appealing to the emotion of fear, for a long time endeavored to decrease crime by making punishments for all kinds of offenses extremely severe, but they found that severity of penalty would not solve the problem. Then the law-makers attempted to apply the principle of justice in the punishment of criminals; they adapted the punishment to the crime, affixing a slight penalty to a petty offense and ordaining a more severe punishment for a more flagrant deed. Still this did not solve the problem; no scheme of punishments, however nicely adjusted, has as yet had the effect of decreasing crime.

In recent years we have been trying to prevent crime by removing its causes. It is recognized that crime is due in a large measure to an unfavorable environment, to bad company, to poverty, to the enervating influence of wealth and luxury, to crowded tenements, to the evil influences of cities, and philanthropists and statesmen are bending their efforts toward improving the environment which is responsible for crime.

Furthermore, the mental attitude of the public toward criminals is changing. Formerly it was the universal opinion that a criminal was a foe to society, and that in meting out punishment to this foe the welfare of society alone should be regarded. Now in the adjustment of punishments there is a disposition to regard the welfare of the criminal as well as the welfare of society. It is contended that a criminal is a person who is afflicted with a disease, the disease of criminality, and that government ought to heal this disease if it can do so. If the criminal cannot be healed, government must prevent him from running at large. If, however, the criminal is curable he must be restored to society as soon as he recovers. A penitentiary, according to this doctrine, is simply a moral hospital where criminals are confined until they are cured of the disease of criminality. In conformity with this view industrial schools, reformatories and asylums are, for many offenses, taking the place of jails and penitentiaries, and *indeterminate* sentences — sentences which detain the criminal only so long as he remains unreformed — are being substituted for commitments for arbitrary definite periods. For dealing with child criminals, special tribunals known as juvenile courts have been established in many places.

QUESTIONS ON THE TEXT

1. How was crime punished in the earlier stages of social development?
2. Why is it necessary that the law should be constantly designating new crimes?

3. When affixing a punishment to a crime what purpose does the law-maker have in view? What are the usual forms of punishment?
4. Give an account of the functions of the State government in reference to crime.
5. Illustrate how punishment for crime varies from State to State.
6. What crimes are punishable by the federal government? What is treason? How is it punished?
7. What is the money cost of crime in the United States?
8. What are some of the causes of crime?
9. What new policy is being adopted in reference to the treatment of criminals?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Arrange the following causes of crime according to the percentage of criminals produced by each: *bad company, drink, poverty, temper, lack of moral principle, mental incapacity.* If you are unable to secure the statistics use your judgment as to an arrangement.
2. How much would be saved in money per voter in the United States if crime should wholly disappear?
3. Are you inclined to support the doctrine that the State in dealing with a criminal should entertain no idea of punishment; that it should simply treat the criminal as a sick person? Give reasons for your answer.
4. Does the constitution of this State say anything about crime? about punishments? What does the Constitution of the United States say about punishments (**142**)? Are those who have been convicted of crime in this State permitted to vote?
5. What industrial schools, reformatories and asylums are supported in this State? Have juvenile courts been established in this State?
6. What notable persons have been accused of treason in the United States? Has there ever been a conviction for treason?
7. Prepare a five-minute paper on The Elmira Reformatory.

TOPICS FOR SPECIAL WORK

1. The Treatment of Crime. **4**: 130–147.
2. Causes of Crime. **26**: 237–261.

XLII

CHARITIES

198. Charity a Function of Government. That it is the function of government to care for the dependent classes has long been recognized. Among the ancients a portion of the tithes was by law devoted to the poor. In ancient Rome corn-laws provided for the distribution of grain from the public granaries to those who could not afford to buy. Throughout the middle ages charity was for the most part administered by the church, but in the sixteenth and seventeenth centuries the governments of Europe began to legislate for the poor. In the reign of Elizabeth, England passed a law requiring each parish to support its own poor, and this law served as a model for poor-laws in the colonies, and later was imitated by the several States.

199. The Care of the Poor a Function of Local Government. The federal government has no charitable functions. It maintains homes for its worn-out sailors and soldiers, and pays vast sums as pensions to those who have served in its wars; but what it spends in this way is regarded not as a gift, but as a debt. Congress sometimes extends quick relief to communities which have been visited by fire or flood, but such assistance cannot properly be called charity.

Power for public almsgiving flows from the State. In the more recently adopted constitutions provision is broadly made for the subject of pauperism, just as provision is made for the subject of crime. The legislature usually imposes upon each locality the burden of caring for its own poor. Charity thus begins at home. The State government seldom dispenses aid directly to the dependent poor.

The civil division which most frequently has charge of public charity is the county. There are often county directors or overseers of the poor, and these have charge of the county almshouse and of the distribution of funds to the needy. In States where there is a vigorous township government, the township, and not the county, administers the charities, and likewise in a well-organized city a department of charities often relieves the county of its charitable function.

200. Outdoor and Indoor Relief. There are two historic methods of helping the poor, the method of outdoor relief and indoor relief. Outdoor relief is the relief of the poor in their homes; indoor relief is given to the poor who have become inmates of almshouses. In most of the States the two methods are employed side by side. The applicant for aid sometimes receives a small sum of money to be spent by himself in his home; sometimes he must go to the almshouse for food, clothing and shelter. Whether aid shall be given indoors or outdoors is a question which the authorities of the locality decide, each case being judged according to the circumstances attending it.

The reasons for outdoor relief are these: (1) it is kindly, since the recipient is not separated from his friends and family; (2) it is economical, since it costs less on an average to assist a person in his home than it does to support him in an almshouse; (3) it would be impossible to accommodate in almshouses all who apply for aid.

The reasons against outdoor relief are: (1) it increases the number of applicants, because it is less disgraceful than the indoor system; (2) it corrupts politics by tempting the authorities to extend aid in return for votes; (3) it reduces the rate of wages, because its recipients can afford to work for less than their self-supporting competitors.[1]

201. The Defective Classes. Government extends its aid

[1] See A. G. Warner, "American Charities."

to the defective classes as well as to the dependent and helpless poor. A century ago paupers, defectives and criminals were often huddled together within the same walls and subjected to treatment that was sometimes barbarous. Now there are separate institutions for each class. Moreover, the defectives are also divided into classes and are cared for in separate institutions. Thus we have institutions for the blind, for the deaf and dumb, for the insane, for the feeble-minded, for the epileptic, for the deformed.

As a rule, the expense of caring for the defective classes is too heavy to be borne wholly by the local government, and it becomes necessary for the State to care for them. In almost every State the central government provides hospitals for the insane, schools for the deaf and dumb, schools for the blind, and reformatory schools for juvenile offenders. These State institutions for defectives are supported in part by State revenues, in part by contributions from the local government.

202. State Boards of Charities. In about half the States there have been established State boards of charities. The duties of these boards vary, but usually the State board of charities exercises a close supervision over all the State reformatories and institutions for the defective classes, and inspects the charitable work of the localities and makes a report thereon to the governor or to the legislature. In several instances this board possesses a very substantial power. Thus in New York the State board of charities visits, inspects and maintains a general supervision of all institutions, societies or associations of a charitable, corrective or reformatory character, whether State, municipal or unincorporated, and it can enforce in these institutions a humane and wise administration.

203. Organized Charity. Of course government is not the only almsgiver. We give to the beggar whom we pass on the street; well-to-do people often make it a point to

extend regular assistance to certain destitute families; churches of every denomination engage in charity work; societies and associations for the relief of the poor abound in every community.

Until quite recently private charities as well as public were indiscriminate and unorganized, and the results of the haphazard giving were often unfortunate and sometimes ludicrous. Alms unwisely extended sometimes converted a person who was simply needy into a professional beggar, and the abundant sources of aid often invited the lazy to quit work and live entirely upon charity. This was possible when by a little diplomacy and cunning one could exploit the benevolence of perhaps a half-dozen churches and as many societies.

In 1869 in England, and a little later in America, a movement was begun to organize charity work, and the results which followed were so satisfactory that charity organization societies were rapidly formed. Societies of this kind, known as associated charities or united charities or the bureau of charities, exist in nearly two hundred cities in the United States.

Organized charity aims:

1. To secure coöperation and unity of action among all charitable agencies, public and private.
2. To learn the facts connected with every application for aid.
3. To extend quick relief to all who are actually in need.
4. To expose impostors.
5. To find work for all who are able and willing to work.
6. To establish relations of personal interest and sympathy between the poor and the well-to-do.

QUESTIONS ON THE TEXT

1. To what extent has charity in the past been regarded as a function of government?

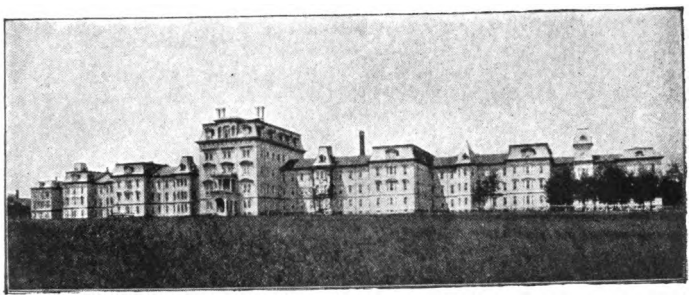
2. To what grade of government has the charitable function in the United States been assigned?
3. What is meant by outdoor relief? indoor relief? What reasons may be given for and against outdoor relief?
4. What provision is made for the defective classes?
5. What is the duty of the State board of charities?
6. What evils attend unorganized and unsystematic charity work?
7. What are the aims of organized charity work?

SUGGESTIVE QUESTIONS AND EXERCISES

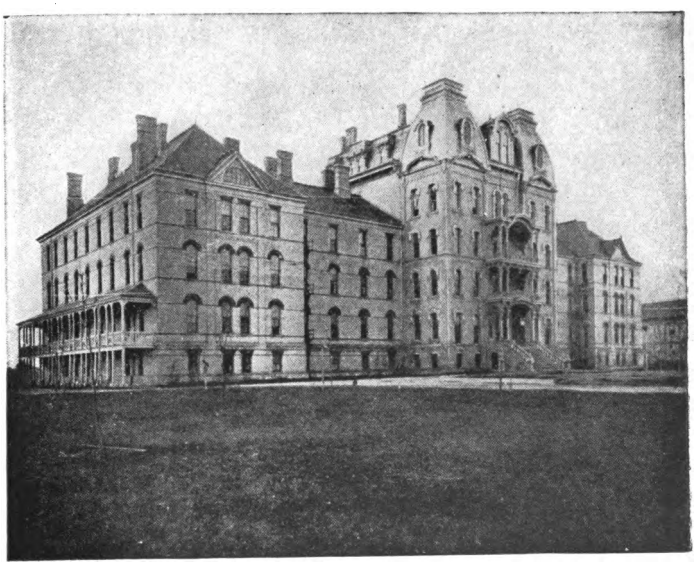
1. Does the constitution of this State say anything about charity? anything about pauperism? Are paupers permitted to vote in this State?
2. What provision is made in this State for the defective classes, the deaf, the blind, the insane, the feeble-minded?
3. Arrange the following causes of poverty according to the percentage of paupers made by each: *lack of employment, sickness, accident, insufficient earnings, intemperance, shiftlessness, physical defects.* If you are not able to secure the facts use your judgment in making an arrangement.
4. Name the charitable institutions of which you have knowledge. Are most of these supported by private liberality?
5. If a street beggar should ask you for money would you give him any? What is "scientific charity"?

TOPICS FOR SPECIAL WORK

1. The Problem of Pauperism. **4**: 148–157.
2. Causes of Poverty. **21**: 32–65.
3. Public Charities. **21**: 363–376.
4. Private Charities. **21**: 377–388.



A State Hospital



A State School for the Blind

XLIII

THE POLICE POWER

204. The Scope of the Police Power. The police power properly extends to the regulation of matters which affect the *health, safety* and *morality* of society. The police power rests on the principle that one must use his own in such a way as not to injure another. I must make such use of my rights, my freedom, my property, as will not interfere with my neighbor in the lawful enjoyment of his rights and freedom and property. If a man, in order to strengthen his lungs, shouts lustily in an open field where no one can hear him, government will not check him, but if his shouting is done where people are disturbed by it the police power may be interposed to silence him. A maker of dangerous explosives may ply his trade in an isolated building and government may not interfere, but if he undertakes to make such explosives where the lives and property of others are thereby put in jeopardy, the police power will be invoked to prevent the manufacture. From its nature "the police power will always have a wider field of action in a city than in a village, and in a village than in a farming neighborhood."

205. The Police Power Exercised by the State. In the division of the powers between the States and the federal government the police power was left entirely to the States. The federal government may exercise this power whenever in the discharge of its regular functions it seems necessary, but it is rare that it does this. The spirit of our government is to leave the police power in its integrity to the States. Several attempts have been made to amend

the Constitution by bestowing upon it powers of this nature, but all such movements have failed.

206. The Public Health. The State avails itself of the police power to preserve and protect the public health. In most of the States there is a *State Board of Health* which exercises a general supervision over sanitary affairs, and coöperates with and gives suggestions to the health officers of the county. One of the most important duties of the State Board is to prevent the spread of contagious diseases. In order to accomplish this it provides for the compulsory vaccination of citizens, and for the disinfection and destruction of places exposed to infectious and contagious diseases. It also may isolate those stricken with contagious maladies, and assist in the enforcement of quarantine laws.

In a few States the State Board of Health is clothed with substantial powers, and exercises a real control over local sanitation, but in most of the States the actual care of the public health rests with the local government. In cities, where proper sanitary conditions are of the highest importance, a municipal board of health wages constant warfare against conditions which produce disease. In the discharge of their duties health officers are often compelled to intrude upon the private rights of the citizen. If some one in a house is suffering with a contagious disease the house may be quarantined; if there is an epidemic of smallpox in a community, the citizens, willing or unwilling, may be compelled to be vaccinated; if the water in a private well contains disease-bearing germs the well may be condemned and filled up by command of the health officers; if wearing apparel has been exposed to contagious disease it may be destroyed by officers of the law. In the name of the public health and by virtue of the police power which it possesses, the State acting through boards of health makes these invasions upon private rights.

207. The Public Safety. The State, or the local govern-

ment acting for it, uses the police power freely to protect the public from unusual dangers. It compels railroad companies to fence their tracks and build them above or below grade at public crossings; it requires engineers to ring the bell and blow the whistle at all places on the railroad where the approach of the train may be dangerous to travel; it regulates the speed of trains, automobiles, and other vehicles; it limits the number of passengers a steamboat may carry; it compels the construction of fire-escapes for tall buildings; it permits the destruction of property to prevent the spread of fire; it throws safeguards around the sale of explosives and poisonous drugs; it commands the muzzling of dangerous dogs; it orders the demolition of buildings that threaten to fall and destroy life or property; it abates nuisances which interfere with the comfort and convenience of society. In a hundred ways the citizen is reminded that the interests and desires of the individual are brushed aside when these happen to be hostile to the safety of society.

208. The Public Morality. For centuries governments sought by legislation to mold the character of individuals. They subjected the private conduct of the citizen to official regulations and restraints with the view of making him a better man. Experience slowly taught the truth that a man cannot be legislated into morality, and governments gradually changed their attitude. Instead of seeking to improve the morals of the individual they framed their laws with the view of preserving the morals of the state. In America the State uses the police power to protect the public morality, but in doing this it does not enter into the conscience and intention of the individual and pronounce certain acts immoral; it simply declares that certain external acts come under the police power for regulation or suppression because they corrupt the morals of the public and thus strike a blow at the general welfare. Among these acts are excessive drinking

of intoxicating liquors, gambling and inflicting cruelty upon animals. The first of these requires particular notice.

Intemperance is as old as history and efforts to suppress it by governmental action are almost as old. A thousand years before the Christian era an emperor in China, in order to put an end to drunkenness, ordered all the vines in the kingdom to be uprooted, a reform which was imitated later (800 B. C.) by Lycurgus of Greece. During the middle ages the church struggled with intemperance, but at the end of the period Bacon was compelled to say that all the crimes on earth did not destroy so many lives or alienate so much property as drunkenness. In the seventeenth and eighteenth centuries the English government undertook to deal with the liquor traffic, but it did not go about the matter in the right way. The consumption of liquor increased and drunkenness continued to be the prevailing vice in all classes of society. In the American colonies the evil was widespread.

In the early years of the nineteenth century temperance societies in England and the United States began a crusade in favor of total abstinence from intoxicating liquors, and about the middle of the century the influence of these societies began to be felt in legislation. In 1851 Maine passed a law prohibiting the sale and manufacture of intoxicating liquors except for medicinal and mechanical purposes, and in that State the prohibition law has been retained and enforced. Other States have passed the famous "Maine law," but not all have retained it. At present the prohibition policy prevails by virtue of constitutional provision in Maine, Kansas, North Dakota, and Oklahoma.

In a number of States a policy of local option prevails in reference to the matter of selling liquor. The voters of a city or county or town vote upon the question whether the saloons shall be licensed or not. If the vote is in

favor of no license the prohibition law is applied to the particular civil division. The plan of local prohibition is followed in about three-fourths of the States.

Are prohibition laws effective? They are where there is a strong public sentiment behind them. Where judges and juries and law officers and the best citizenship of a community are in earnest, and are determined that intoxicating liquors shall not be sold, a prohibition law, whether local or general, is as successful in that community as other laws. As a matter of fact, prohibition laws affecting the whole State have not often accomplished their purpose in all parts of the State, but the plan of local option has usually given satisfaction to the friends of prohibition.

A great many advocates of temperance reform believe that absolute prohibition is impossible and are content that the liquor traffic should be regulated. One form of regulation is to require of those who sell liquors an unusually *high license.* In the States where the high license policy has been adopted the license varies from three hundred dollars to twelve hundred dollars. Thus in some States every saloon supports a school. The advocates of high license claim that it does away with objectionable saloons; that it confines the traffic to responsible dealers; that it diminishes the number of saloons and thereby decreases the power which the saloon may have in politics.

QUESTIONS ON THE TEXT

1. To what matters does the police power extend? On what fundamental principle does the police power rest?
2. By which of the governments is the police power usually exercised? When does the federal government exercise this power?
3. What are the duties of the State Board of Health? Give illustrations of the way health officers exercise the police power.
4. What are some of the uses made of the police power to protect the public safety?
5. What actions are regulated or suppressed because they corrupt public morality?

6. What measures have governments taken in reference to temperance? What has been the history of temperance legislation in the United States?

7. Describe two forms of prohibition. When are prohibition laws effective?

8. Describe two methods of regulating the liquor traffic.

NOTES, SUGGESTIVE QUESTIONS AND EXERCISES

1. Give reasons why the police power should not be exercised by the federal government.

2. Does the constitution of the State say anything about the police power?

3. Is there a State board of health in this State? How is it chosen? What are some of its powers?

4. Is there a local board of health in this municipality? How is it chosen? What is it doing for the public health?

5. Name some uses of the police power not stated in the text.

6. Are you aware of any unwarranted use of the police power in this State? If so, how may the abuse be corrected?

7. On what grounds would you justify a law or ordinance which forbids: the firing of Chinese crackers on the Fourth of July? the tooting of horns on Christmas Eve? the wearing of feathers in ladies' hats? the running of trains on Sunday? the selling of cigarettes to boys? the building of wooden houses in the center of cities? the maintenance of a gambling hall?

8. Does the constitution of this State say anything about the sale of intoxicating liquors?

9. Are the laws of this State in reference to the sale of liquor regulative or prohibitive? Are they effective laws?

10. Is the violation of a police law always a crime? What is the difference between a crime and a misdemeanor? between a crime and a sin? a crime and a vice?

APPENDIX A

[THE CONSTITUTION

OF THE

UNITED STATES OF AMERICA]

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen,

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, *three-fifths of all other Persons.*[1] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of

[1] The clause in italics superseded by the 13th and 14th amendments.

the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the age of thirty Years, and been nine Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year,

and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two-thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the desire of one-fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been en-

creased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution,[2] or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

[2] Resolutions of Congress proposing amendments to the Constitution do not require the assent of the President.

SECTION 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies[3] throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;[4]

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[3] A bankrupt law enables a person who is unable to pay all his debts to divide what property he has among his creditors proportionately and to be discharged from legal obligation to make further payment. Congress has absolute power in the matter of bankruptcy but it has not exercised this power continuously. The present bankrupt law was passed in 1898. In the absence of legislation by Congress the State regulates the subject of bankruptcy.

[4] An author may secure a copyright on a book by sending to the librarian of the Library of Congress at Washington a copy of the title-page and two copies of the book on or before the day of publication. The copyright gives an exclusive right to sell for twenty-eight years, a period which upon application may be extended twenty-eight years. A patent secures to an inventor the exclusive right to manufacture and sell his invention for seventeen years. Patents are secured by sending to the Commissioner of Patents at Washington a working model of the thing invented.

To raise and support Armies, but no Appropriation of 56
Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy; 57

To make Rules for the Government and Regulation of 58
the land and naval Forces;

To provide for calling forth the Militia to execute the 59
Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively the Appointment of the officers, and the Authority of training the Militia according to the 60
discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatso- 61
ever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government and of the United States, and to exercise like Authority over 62
all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

To make all Laws which shall be necessary and proper 63
for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.] [5]

[5] This clause has no longer any significance.

64 The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

65 No Bill of Attainder or ex post facto Law shall be passed.

66 No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

67 No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Com-
68 merce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

69 No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular
70 Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

71 No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

72 Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts;
73 pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay
74 any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection
75 Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such a Majority, and have an equal Number of Votes, then the House of Representatives shall immedi-

ately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having
84 one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors
85 shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.] [1]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of
86 the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not
87 have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the
88 Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law pro-
89 vide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Serv-
90 ices, a Compensation which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[1] This paragraph has been superseded by the 12th amendment.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly 91
swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of 92
the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writ- 93
ing, of the principal Officer in each of the Executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Re- 94
prieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds 95
of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Con- 96
suls, Judges of the supreme Court, and all other Officers 97
of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment 98
of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by 99
granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge neces-

sary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; [1] — between Citizens of different States; — between Citizens of the same State

[1] This clause was modified by the 11th amendment (p. 125).

claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all 110
the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the 111
State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall con- 112
sist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of 113
two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punish- 114
ment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each 115
State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

116 SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony,
117 or other Crime, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to remove to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.][1]

118 SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

119 The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

120 SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasions; and on
121 Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

[1] Since the abolition of slavery this clause has had no significance.

ARTICLE V

The Congress, whenever two-thirds of both Houses shall 122
deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of 123
the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived 124
of its equal Suffrage in the Senate.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid 125
against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties 126
made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any 127
Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers both of the United States

and of the several States, shall be bound by Oath or Affir-
128 mation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

129 The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of
130 America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G°: WASHINGTON — *Presidt.*
and deputy from Virginia

Attest WILLIAM JACKSON *Secretary*

New Hampshire	JOHN LANGDON NICHOLAS GILMAN
Massachusetts	NATHANIEL GORHAM RUFUS KING
Connecticut	WM. SAML. JOHNSON ROGER SHERMAN
New York . . .	ALEXANDER HAMILTON
New Jersey	WIL: LIVINGSTON DAVID BREARLEY WM. PATERSON JONA: DAYTON

Pennsylvania	B. Franklin Thomas Mifflin Robt. Morris Geo. Clymer Thos. Fitz Simons Jared Ingersoll James Wilson Gouv Morris
Delaware	Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom
Maryland	James McHenry Dan of St Thos. Jenifer Danl Carroll
Virginia	John Blair — James Madison Jr.
North Carolina	Wm: Blount Richd. Dobbs Spaight Hu Williamson
South Carolina	J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler
Georgia	William Few Abr Baldwin

ARTICLES

IN

ADDITION TO, AND AMENDMENT OF

THE

CONSTITUTION OF THE UNITED STATES OF AMERICA[1]

PROPOSED BY CONGRESS AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE CONSTITUTION

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

[1] The first ten amendments were adopted in 1791.

ARTICLE III

No soldier shall, in time of peace be quartered in any 135
house, without the consent of the Owner, nor in time of war,
but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, 136
houses, papers, and effects, against unreasonable searches
and seizures, shall not be violated, and no Warrants shall
issue, but upon probable cause, supported by Oath or affir-
mation, and particularly describing the place to be
searched, and the persons or things to be seized.

ARTICLE V

No person should be held to answer for a capital, or
otherwise infamous crime, unless on a presentment or in- 137
dictment of a Grand Jury, except in cases arising in the
land or naval forces, or in the Militia, when in actual serv-
ice in the time of War or public danger; nor shall any
person be subject for the same offence to be twice put in
jeopardy of life or limb; nor shall be compelled in any
Criminal Case to be a witness against himself, nor be de-
prived of life, liberty, or property, without due process 138
of law; nor shall private property be taken for public use,
without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the
right to a speedy and public trial, by an impartial jury 139
of the State and district wherein the crime shall have been

committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI[1]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, com-

[1] Adopted in 1798.

menced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII[1]

The Electors shall meet in their respective States, and 146
vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person 147
voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be 148
taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

[1] Adopted in 1804.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

ARTICLE XIII[1]

149 SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV[2]

SECTION 1. All persons born or naturalized in the
150 United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they
151 reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of
152 life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among
153 the several States according to their respective numbers, counting the whole number of persons in each State, ex-

[1] Adopted in 1865 [2] Adopted in 1868.

cluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced 154
in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States shall have engaged 155
in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for 156
payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or 157
pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to en- 158
force, by appropriate legislation, the provisions of this article.

ARTICLE XV[1]

159 SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

[1] Adopted in 1870.

APPENDIX B

LIST OF BOOKS TO WHICH REFERENCES ARE MADE

1 "READINGS IN CIVIL GOVERNMENT." BY PERCY L. KAYE.
2 "The Rights of Man." Lyman Abbott.
3 "The American Commonwealth." James Bryce. 1910 Edition. Two Volumes.
4 "The Spirit of Democracy." C. F. Dole.
5 "The American Constitutional System." C. F. Dole.
6 "American Legislatures and Legislative Methods." Paul S. Reinsch.
7 "The American Executive." J. H. Finley and J. F. Sanderson.
8 "The American Judiciary." Simeon E. Baldwin.
9 "Territories and Dependencies." W. F. Willoughby.
10 "Party Organization and Machinery." Jesse Macy.
11 "City Government in the United States." Frank J. Goodnow.
12 "Local Government in Counties, Towns and Villages." J. A. Fairlee.
13 "The City, the Hope of Democracy." F. C. Howe.
14 "The American Government." A. B. Hinsdale.
15 "The American Federal State." R. L. Ashley.
16 "The American City." D. F. Wilcox.
17 "Introduction to Public Finance." Carl C. Plehn.
18 "The Principles of Economics." Frank A. Fetter.
19 "Introduction to the Study of Economics." Charles J. Bullock.
20 "Financial History of the United States." D. R. Dewey.
21 "American Charities." A. G. Warner.
22 "Socialism. A Summary and Interpretation of Socialistic Principles." John Spargo.
23 "Government by the People." Robert H. Fuller.
24 "American Railway Transportation." Emory R. Johnson.
25 "Labor Problems." T. S. Adams and Helen L. Sumner.
26 "Dependents, Defectives, Delinquents." C. R. Henderson.

Note. Dr. Kaye's "Readings in Civil Government" is arranged in accordance with the plan of the "American Republic," and it is strongly recommended as a most useful supplementary volume. (535 pp. $1.20 net. The Century Co., New York.)

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